

CITY OF KALAMAZOO
INVESTIGATION REPORT & DETERMINATION

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I. Administrative History of Investigation

On June 30, 2022, Complainant #1, identified as KDPS employee [REDACTED] filed an official Complaint of Discrimination and Harassment naming Chief Vernon Coakley as the Respondent. INCompliance Consulting was appointed by the City to investigate the allegations, and Melissa Carleton and Rob Kent (the "Investigators") conducted the investigation on its behalf.

On August 12, 2022, Complainant #2, identified as City employee [REDACTED] filed an official Complaint of Discrimination and Harassment naming Chief Vernon Coakley as the Respondent related to allegations of use of language that may constitute sexual harassment that allegedly took place early during the summer of 2022. The Complaint filed by Complainant #2 was incorporated into the pending investigation of the Complaint filed by Complainant #1.

On August 13, 2022, Complainant #3, identified as City employee [REDACTED] filed an official Complaint of Discrimination and Harassment naming Chief Vernon Coakley as the Respondent related to allegations of use of language that may constitute sexual harassment that allegedly took place on August 9, 2022. The Complaint filed by Complainant #3 was incorporated into the pending investigation of the Complaint filed by Complainant #1 and Complainant #2.

II. Allegations and Associated Findings of Policy Violations

1. **Complainant #1, Allegation #1:** Complainant #1 alleges that between 2018-2019, the Respondent would pull her hair, specifically Respondent would move his hand up the back of her head with his fingers spread apart and touching her scalp, then would pull her head back using the hand that was in her hair.

Finding of Policy Violation: Code of Conduct/Discriminatory Harassment

2. **Complainant #1, Allegation #2:** Complainant #1 alleges that on June 28, 2022 the Respondent said "hi" to Complainant #1 and two of her colleagues while they were in the parking lot walking in from lunch. One of the colleagues said "hi" back, one of the colleagues waved to the Respondent, and Complainant #1 smiled to Respondent in response. Complainant #1 said that the Respondent singled her out and told her to "come here," to which she thought the Respondent was "messing around," so she stopped and said "no thank you." The Complainant #1 said the Respondent then told her to "come here" again and that the Respondent was upset. Complainant #1 said that the Respondent then "stormed" around the vehicle and stood close enough to her that she could feel the spit on her face as the Respondent yelled and screamed at her about how she violated a policy by not saying "hi" to the Respondent. Complainant #1 said the Respondent later requested that she receive discipline for insubordination, and that the Respondent was responsible for Complainant #1 being sent home for the rest of the day.

Finding of Policy Violation: Standards of Conduct

- 3. **Complainant #2, Allegation #3:** Complainant #2 alleges that early in the summer of 2022, she was visiting the Respondent in his office when the Respondent said that “something doesn’t seem right” with Complainant #2 that day. Complainant #2 said she responded that it was probably her ex or her sister that was getting her down, and that she wished she had someone to talk to. Complainant #2 said she told the Respondent that her son told her that she is “badass” and “doesn’t take crap.” Complainant #2 said that the Respondent asked if he had Complainant #2’s permission to “speak frankly.” She responded, “Sure.” The Respondent then stated, “If I pinned you up against that wall, I bet you’d melt.” Complainant #2 indicated that she definitely viewed the comment as sexual in nature.

Finding of Policy Violation: Standards of Conduct

- 4. **Complainant #3, Allegation #4:** Complainant #3 alleges that on Tuesday, August 9, 2022, upon entering the Respondent’s office, the Respondent stated to Complainant #3 “you look so good...” while the Respondent was at the end of his desk, and Complainant #3 was in front of the conference table in the Respondent’s office. Complainant #3 said the Respondent then said, “...I could lay you down on that table right now.”

Finding of Policy Violation: Standards of Conduct

III. Witnesses and Evidence Reviewed

A. Witnesses

Witnesses interviewed as part of this investigation, divided by role and employment within KDPS are as follows:

Employees within [REDACTED]

- o Witness #1: [REDACTED]
- o Witness #2: [REDACTED]

Employees within [REDACTED]

- o Witness #3: [REDACTED]
- o Witness #4: [REDACTED]
- o Witness #5: [REDACTED]
- o Witness #6: [REDACTED]
- o Witness #7: [REDACTED]
- o Witness #8: [REDACTED]
- o Witness #9: [REDACTED]
- o Witness #10: [REDACTED]

Other Employees of KDPS outside of [REDACTED]

- Witness #11: [REDACTED]
- Witness #12: [REDACTED]
- Witness #13: [REDACTED]
- Witness #14: [REDACTED]
- Witness #15: [REDACTED]
- Witness #16: [REDACTED]
- Witness #17: [REDACTED]
- Witness #18: [REDACTED]
- Witness #19: [REDACTED]

B. Evidence Reviewed

The documents and evidence reviewed during the course of this investigation are as follows:

- 6/30/2022 Complaint Form Discrimination and Harassment – [REDACTED]
- 8/12/2022 Complaint Form Discrimination and Harassment – [REDACTED]
- 8/13/2022 Complaint Form Discrimination and Harassment – [REDACTED]
- 8/15/2022 Supplemental Statement from [REDACTED]
- 9/19/2022 Chief Coakley Written Response to Allegations¹
- 9/22/2022 Anonymous Voicemail
- Surveillance Footage of the Entrance to KDPS Headquarters:
 - Crosstown Exterior North-10.149.153.102-2022-06-28-12h40min08s000ms
 - Crosstown Exterior Pavilion -10.149.153.102-2022-06-28-12h40min08s000ms

IV. Overview of Evidence

A. Complainant #1, Allegation #1: Overview of Evidence - Through the course of the Investigation, the Investigators identified the following facts relevant to the assessment of Allegation #1 reported by Complainant # 1:

1. One [REDACTED] Employee, identified as Witness #1, reported that they directly witnessed the Respondent pull the Complainant's Hair in the [REDACTED]
2. One [REDACTED] Employee, identified as Witness #2, reported that while they did not see the Respondent pull the Complainant's hair, the Complainant reported the alleged hair pulling to Witness #2 shortly after it took place.
3. One [REDACTED] employee, identified as Witness #3, reported that she directly witnessed the Respondent pull the Complainant's hair while the Complainant was employed in [REDACTED]. While no specific date was given, Witness #3 reported that they witnessed this conduct prior to 2018.

¹ Respondent alleged in his written response and during his interview with Investigators that, on numerous occasions while he has been employed with KDPS, he has endured acts of discrimination based on his race. Investigators identified that Respondent may file a formal complaint in relation to the allegations and recorded the allegations in the event they would be relevant to the underlying investigation. Information regarding the allegations are not included in this report as the Investigators do not find the allegations are relevant to the underlying investigation.

4. One [REDACTED] employee, identified as Witness #4, reported that the Respondent directed specific and noticeable attention to the Complainant even in group settings while in the [REDACTED]
5. The remaining four [REDACTED] employees interviewed by the Investigators reported that they did not witness any conduct similar to the allegations of hair pulling or other forms of touching directed at the Complainant or any other employees.
6. Two employees, Witness #3 and Witness #5 reported that they had also had their hair pulled by the Respondent while they were employed in [REDACTED]
7. The Investigators spoke with 7 employees of KDPS that are employed in roles outside of [REDACTED]. While there is no indication that any of these employees were physically present within the [REDACTED] offices on a regular basis as part of their employment with KDPS, none of the interviewed parties stated that they had witnessed the Respondent pulling the hair of any employee or engaging in conduct of a similar nature.
8. No evidence of prior reports of misconduct similar to the allegations of hair pulling made to Human Resources or through other channels were identified through the investigation.

B. Complainant #1, Allegation #2: Through the course of the Investigation, the Investigators identified the following facts relevant to the assessment of Allegation #2 reported by Complainant # 1:

1. While the context of each account differs, the accounts of all four individuals present at the time of the incident agree on the following facts:
 - a. Witness #1 and Witness #2 acknowledged the Respondent's greeting in some way.
 - b. The Respondent made a comment to the Complainant and the Complainant did not respond. The Respondent replied to that comment by stating something to the effect of "come here" and Complainant rejected his request.
 - c. Witness #1 and Witness #2 were waiting under the canopy near the entrance of the building for the Complainant during the incident.
 - d. The Complainant was near the Respondent's vehicle within sight of Witness #1 and Witness #2. At some point, the Respondent walked around his vehicle closer to the Complainant.
 - e. The Respondent spoke to the Complainant in a raised voice. All parties noted that Witness #1 and Witness #2 were under the canopy, described as being approximately 20 feet away from where the Complainant and the Respondent were standing. The accounts of Witness #1 and Witness #2 regarding the comments of the Respondent were consistent with the statements of the Complainant and the Respondent confirming that the Respondent's voice was

loud enough for the witnesses to hear them from approximately 20 feet away.

- f. While the accounts of the specific language used differs, the Respondent communicated to the Complainant that she must acknowledge him and discussed this lack of acknowledgement in relation to Department policies and procedures.
 - g. The Complainant was placed on leave following the incident. The Respondent stated that [REDACTED]
 - h. Video footage obtained from the City confirms the above.
- 2. The Complainant, Witness #1, and Witness #2 each report that the Respondent was standing over the Complainant or in very close proximity to the Complainant while speaking to her in a raised voice.
 - 3. 7 witnesses stated that they were unaware of the Respondent's preferences that all employees acknowledge or otherwise say "hi" to the Respondent or had not witnessed Respondent Correct someone who did not say hi to him, while 1 witness, Witness # 11, stated that they were aware of this preference.
 - 4. 2 witnesses, Witness #5 and Witness #1, stated that they could remember a situation where they did not say "hi" or otherwise acknowledge the Respondent and were not reprimanded for their behavior.
 - 5. 1 witness, Witness # 4, noted a time in which they said hi to the Respondent and Respondent did not respond.
 - 6. 1 witness, Witness #11, recalled a situation where the Respondent asked a KDPS employee to respond back when addressed.

C. Complainant #2, Allegation #3: Through the course of the Investigation, the Investigators identified the following facts relevant to the assessment of Allegation #3:

- 1. The Respondent denies ever making a comment to Complainant #2 similar to "If I pinned you up against that wall, I bet you'd melt." The Respondent reported that he has never spoken to Complainant #2 in a "disrespectful or sexual way" and stated "I did not say I would put her against a wall and she would melt or anything like that."
- 2. Both the Complainant and the Respondent agree that the Respondent has previously on one occasion made a comment to the Complainant similar to "Can I be frank?" The Complainant and the Respondent disagree on the context of the alleged conversation in which this phrase was used and the locations at which the Respondent used this phrase.
- 3. The Complainant and the Respondent agree that they have had prior conversations about KDPS recruiting [REDACTED]
- 4. No witnesses to this conduct were identified.

D. Complainant #3, Allegation #4: - Through the course of the Investigation, the Investigators identified the following facts relevant to the assessment of Allegation #4:

1. Both the Complainant and the Respondent agree that the Respondent made a comment to the Complainant on August 9th, 2022 while in the Respondent's office. Specifically, both parties agree that this comment regarded throwing the Complainant on a table. However, the specific phrasing of the comment is in dispute:
 - a. The Complainant states that the Respondent said "you look so good...I could lay you down on that table right now."
 - b. The Respondent states he said "no, you look good, you could get thrown up on a table."
2. Both the Complainant and the Respondent state that the Respondent was standing near his desk and the Complainant was standing near the conference table with approximately 5 feet between them when the alleged comment was said.
3. There were no other parties present when the alleged comment was made.
4. The Complainant and Respondent each acknowledge that the Complainant has lost approximately 60 pounds since February and that the comment by the Respondent may have been with regard to the Complainant's appearance.
5. The Complainant and the Respondent met on August 11th, 2022 in the Complainant's office. [REDACTED]. Further, both parties agree that the Complainant discussed the comments the Respondent allegedly made to her on August 9th. The details of these specific comments are in dispute.

V. Applicable Policy Definitions and Standards

KDPS adopts standards of conduct within the KDPS Policy Manual. The Manual includes multiple policies that may be applicable to the conduct alleged to have been committed by Respondent, (a) the Code of Conduct, published December 1, 1978, (b) the Discriminatory Harassment Policy published October 4, 2019 (the "Harassment Policy")² and (c) the Standards of Conduct policy published January 28, 2020 and revised on July 21, 2022. Provisions within the three policies which may be applicable are provided below.

² When Investigators requested copies of applicable policies from KDPS, a Department representative noted that the Harassment Policy was created during the Department's transition to Lexipol in 2018 and that, because the Department no longer has access to Lexipol, the Department is unable to confirm if or when and revisions were made to the policies between 2018-2019.

A. Code of Conduct

The Code of Conduct policy prohibits officers from engaging in certain “activities while on duty”, including:

Any sexual conduct (except during vice investigations, and then only with specific consent of a commanding officer, and never in uniform).

Code of Conduct, § 5.14(F).

B. Discriminatory Harassment, Policy 311

The Harassment Policy describes a prohibition on discriminatory harassment, including sexual harassment:

Discriminatory harassment, including sexual harassment, is verbal or physical conduct that demeans or shows hostility or aversion toward an individual based upon that individual’s protected class. It has the effect of interfering with an individual’s work performance or creating a hostile or abusive work environment.

Conduct that may, under certain circumstances, constitute discriminatory harassment can include making derogatory comments, crude and offensive statements or remarks; making slurs or off- color jokes; stereotyping; engaging in threatening acts; making indecent gestures, pictures, cartoons, posters or material; making inappropriate physical contact; or using written material or department equipment and/or systems to transmit or receive offensive material, statements or pictures. Such conduct is contrary to department policy and to a work environment that is free of discrimination.

Harassment Policy, § 3.3.

The Harassment Policy also includes a definition of “sexual harassment”:

The Department prohibits all forms of discrimination and discriminatory harassment, including perceived sexual harassment. It is unlawful to harass an applicant or a member because of that person’s sex or gender.

Sexual harassment includes, but is not limited to, unwelcome sexual advances, requests for sexual favors or other verbal, visual or physical conduct of a sexual nature when:

(a) Submission to such conduct is made either explicitly or implicitly as a term or condition of employment, position or compensation.

(b) Submission to, or rejection of, such conduct is used as the basis for any employment decisions affecting the member.

(c) Such conduct has the purpose or effect of substantially interfering with a member's work performance or creating an intimidating, hostile, or offensive work environment.

Harassment Policy, § 3.2.

In addition, the Harassment Policy prohibits retaliation against persons for certain actions related to actual or alleged discriminatory conduct:

Retaliation is treating a person differently or engaging in acts of reprisal or intimidation against the person because he/she has engaged in protected activity, filed a charge of discrimination, participated in an investigation or opposed a discriminatory practice. Retaliation will not be tolerated.

Harassment Policy, § 3.1.³

The Harassment Policy also identifies certain types of actions that are not considered discrimination or discriminatory harassment:

Discrimination and discriminatory harassment do not include actions that are in accordance with established rules, principles or standards, including:

* * *

(b) Bona fide requests or demands by a supervisor that a member improve his/her work quality or output, that the member report to the job site on time, that the member comply with City or department rules or regulations, or any other appropriate work-related communication between supervisor and member.

Harassment Policy, § 3.4

The Harassment Policy identifies that the Policy may regulate and prohibit conduct beyond that which may be covered by state and federal law:

The nondiscrimination policies of the Department may be more comprehensive than state or federal law. Conduct that violates this policy may not violate state or federal law but still could subject a member to discipline. In addition, employees of the Kalamazoo Department of Public Safety are subject to the City of Kalamazoo Policy and Procedures Manual dealing with Discrimination and Harassment Complaints.

Harassment Policy, § 3.2.⁴

³ This provision was not included within the version of the most recent 2019 version of the Lexipol policy in the possession of the Department.

⁴ This provision was not included within the version of the most recent 2019 version of the Lexipol policy in the possession of the Department.

C. Standards of Conduct, Policy 310

The Standards of Conduct policy establishes expected standards of conduct for KDPS employees, referenced within the Policy as “department members.” Standards of Conduct policy, § 1. Standards of conduct described in the Policy include prohibitions on “[d]iscourteous, disrespectful or discriminatory treatment of any member of the public or any member of this department or the City”, Standards of Conduct policy, § 6.9(f) or (g) ⁵, and “[a]ny other on- or off-duty conduct which any member knows or reasonably should know is unbecoming a member of this department, is contrary to good order, efficiency or morale, or tends to reflect unfavorably upon this department or its members”, Standards of Conduct policy § 6.9(n) or (o)⁶. Upon request by the Investigators for clarification of historical practices in application of the Standards of Conduct policy, the City acknowledged that KDPS applies the plain meaning of the terms found within the policy and that previous investigations have concluded that a single comment rises to the level of a policy violation.

The Standards of Conduct policy sets an expectation that “[m]embers shall comply with lawful directives and orders from any department supervisor or person in a position of authority, absent a reasonable and bona fide justification.” Standards of Conduct policy, § 3. The Policy notes that “[d]isobedience of any legal directive or order issued by any department member of a higher rank shall be considered insubordination.” Standards of Conduct policy, § 6.1(b). However, the Policy also notes that “[s]upervisors and managers are required to follow all policies and procedures and may be subject to discipline for:... (d) Exercising unequal or disparate authority toward any member for malicious or other improper purpose.” Standards of Conduct policy, § 3.2.

VI. Findings of Fact and Application of Policy

A. Complainant #1

1. Allegations of Hair Pulling

a. Summary of Statements and Evidence

In the course of reviewing the reported encounter between the Complainant and the Respondent in the parking lot on June 28, 2022, additional allegations of misconduct came to light. The first mention of potential additional misconduct allegations came forth when Witness #1 was asked to write a memo detailing what he witnessed in the parking lot. In response to a comment by Witness #11 who was tasked with collecting witness statements, Witness #1 reported that he replied "are

⁵ The prohibited conduct in the version of Conduct Policy operative January 28, 2020 through July 20, 2022, is at subsection (f). The prohibited conduct in the version of Conduct Policy operative July 21, 2022 to the date of this report is at subsection (g). Both versions include the same operative language.

⁶ The prohibited conduct in the version of Conduct Policy operative January 28, 2020 through July 20, 2022, is at subsection (n). The prohibited conduct in the version of Conduct Policy operative July 21, 2022 to the date of this report is at subsection (o). Both versions include the same operative language.

you fucking kidding me, you really have no idea what is going on here. I'm going to write the memo and it is not going to look good for him," referring to the Respondent.

The second reference to the potential for new allegations of prior misconduct took place at the time Complainant #1 was placed on paid leave. Complainant #1 attended a meeting following the encounter with the Respondent. Witness #5, who was [REDACTED] and also previously worked with the Complainant in [REDACTED] was present at Complainant #1's request. During the meeting, Witness #5 reported that she referred to how the Respondent treated Complainant #1 in the past and said that she had been aware for some time that the Respondent made Complainant #1 uncomfortable.

Two days later, on June 30, 2022, Complainant #1 filed an official Complaint of Discrimination and Harassment. In this Complaint, Complainant #1 not only details the encounter in the parking lot on June 28, 2022, but also alleges that starting in 2017, the Respondent began entering the [REDACTED] office several times per month and would touch Complainant #1's hair. Complainant #1 reported that Respondent would move his hand up the back of her head with his fingers spread apart and touching her scalp, then would pull her head back using the hand that was in her hair. Complainant #1 said the touch felt like a sexual, intimate motion. Complainant #1 said that, on most occasions, she would tell the Respondent to stop. Complainant #1 said that the Respondent would stop for the moment, but then would do it again the next time the Respondent entered the office. Complainant #1 said that, by the beginning of 2019, in order to avoid the touching, any time the Respondent would come into the [REDACTED] office she would leave and go into a room where only [REDACTED] employees could go. Complainant #1 said that her partners would take care of the Respondent's needs. Complainant #1 said that she would be uneasy walking down hallways and being outside of her office because she would fear seeing the Respondent.

The Respondent denies ever touching Complainant #1 in any way, including touching her hair or scalp. Specifically, the Respondent stated "I have never pulled [Complainant's] hair, touched her hair, or touched her in any way. Her allegations are pure fantasy. I cannot overstate how ludicrous (and false) these allegations are."⁷

Through the course of the investigation, the Investigators spoke with 10 [REDACTED] employees, 3 male and 7 female, who shared a physical office space with the Complainant. In 2018, the Complainant began working in the [REDACTED] and the [REDACTED] was moved to a new location. Of the 10 [REDACTED] employees interviewed, two employees transitioned with

⁷ Respondent alleged in his written response to the allegations, dated September 19, 2022, that Complainant #1 dislikes Respondent because he has publicly stated that "Black Lives Matter," while she believes that police officers should only say "Blue Lives Matter." Respondent further asserted, "I believe it is inherently racist to deny that black lives do in fact matter, or to respond and deflect with 'Blue Lives Matter' or 'All Lives Matter.'" During his interview, the investigators asked Respondent if he had ever heard Complainant #1 talk about "All Lives Matter" or "Blue Lives Matter," and Respondent said that he had not, but it was just a gut feeling he had about Complainant #1. While Respondent suggested that race may have played a role in the complainants against him, no other information was provided by Respondent suggesting that any of the three Complainants had discriminatory racial views or made discriminatory racial statements. Thus, the investigators could not further explore this potential motive for the complaints.

Complainant #1 to [REDACTED] Only three employees—Witness #1, Witness #2, and Complainant #1—work in the [REDACTED] Department.

In the course of the 10 interviews, 2 witnesses reported directly witnessing the Respondent pull Complainant #1's hair, 1 witness was told about the Respondent pulling Complainant #1's hair directly after it took place by Complainant #1 but did not witness the conduct, and 1 witness reported that the Respondent directed specific and noticeable attention to Complainant #1 even in group settings while in the [REDACTED] Office, and 2 witnesses reported that they too had previously had their hair pulled by the Respondent and witnessed the Respondent pulling the hair of other female [REDACTED] employees other than Complainant #1. The remaining 4 of the witnesses interviewed who worked within [REDACTED] did not witness any behavior of touching or hair pulling. None of the individuals who reportedly had their hair pulled were male.

According to Witness #1, the Respondent would always want to approach Complainant #1 and touch her and Complainant #1 was not shy about saying "leave me alone," "don't touch me," or "I don't want you to touch me." Witness #1 stated that it never mattered and that the Respondent would do it anyway, whether it was placing his arm around the Complainant #1's shoulder or pulling her hair. Witness #1 clarified that the Respondent was going up under Complainant #1's hair to her scalp and pulling her hair. Witness #1 stated that it was to the point where Complainant #1 would not be alone with the Respondent and she would leave. Witness #1 said that he understood why Complainant #1 left the room and that it made sense. Witness #1 said that he would run interference. Witness #1 stated that if Complainant #1 had the opportunity, she would get up and go in the back before she encountered the Respondent. Witness #1 said that he would be on email, the phone, or whatever they were doing, and if he were quick enough he would acknowledge the Respondent to try to let Complainant #1 know to go away.

The other [REDACTED] employee, Witness #2, did not directly observe the Respondent pulling Complainant's hair but stated that Complainant #1 reported to them that the Respondent had pulled her hair shortly after the hair pulling took place. It should be noted that while Witness #2 worked in the [REDACTED] Office, they were physically located within a closed room reserved for FOIA redactions rather than in the general workspace with Complainant #1 in the [REDACTED] office where the reported hair pulling took place.

While not specific to the timeframe identified in the Complainant's report, one employee, Witness #3, who worked in the [REDACTED] Office with Complainant #1, stated that they witnessed the Respondent pulling Complainant #1's hair during the time period in which Complainant #1 worked in the [REDACTED] Office. Witness #3 was also able to identify a potential pattern of behavior. Specifically, Witness #3 reported that she had also previously had her hair pulled by the Respondent and reported that she had directly witnessed the Respondent pulling the hair of four other female [REDACTED] Employees, including Complainant #1. A second female [REDACTED] Employee, Witness #5, reported that the Respondent had also pulled her hair and reported that she had seen the Respondent pull the hair of other female [REDACTED] employees as well. Complainant #1 acknowledged to the Investigators that while she had not directly witnessed the Respondent pulling the hair of other female employees, she was aware of "talk" that the Respondent had engaged in similar behaviors with at least three other female [REDACTED] Employees. While these

additional reports of hair pulling are not subject to this investigation and no formal complaints have been filed specific to these claims, the information may demonstrate similar behavior directed at similarly situated employees within a similar context by the Respondent.

Complainant #1 reported that the Respondent pulling her hair and not stopping despite her vocal and physical objections to the conduct impacted the manner in which Complainant #1 was able to work. Specifically, Complainant #1 stated that it became hard for her to do her work because she could not be at her desk because she was avoiding the Respondent. Complainant #1 reported that she had to find other work to do when the Respondent was around. Further, Complainant #1 stated that she would be uneasy walking down hallways for fear of seeing him, so she stayed in her office. Complainant #1 felt like she didn't have free reign to walk in headquarters. Complainant #1 reported that by 2019 she was "pretty good" at avoiding the Respondent and there are no allegations of hair pulling after 2019 or any additional encounters with the Respondent until the June 28, 2022 conversation with the Respondent in the parking lot as detailed in Complainant #1, Allegation #1. Witness #1 corroborated the steps Complainant #1 took to avoid the Respondent, and Witness #2 and Witness #5 noted that they were aware of this tension between Complainant #1 and the Respondent.

b. Findings of Fact

There is no video or other documentary evidence available which provides a contemporaneous account of the allegations from 2018. The Investigators were left to the recollection of the parties and witnesses to determine whether or not the alleged conduct occurred. For the following reasons, the Investigators find that Respondent engaged in the hair pulling conduct alleged by Complainant #1.

Complainant #1 provided a detailed account of Respondent's hair pulling, and her response to the hair pulling, including verbal rejection of the conduct and subsequent evasive maneuvers she took to prevent contact with Respondent so as to prevent continued the hair pulling. Both of the employees who continued to work in the same space as Complainant #1 after she began evading contact with the Respondent were aware of Complainant #1's acknowledgement that she did not want to be in the same space as Respondent due to the hair pulling and acknowledged that they supported Complainant #1's evasive maneuvers.

Two witnesses identified that they saw Respondent pull Complainant #1's hair. The witnesses provided detailed descriptions of Respondent's conduct and Complainant's response to the conduct. Furthermore, two of the witnesses also described that they too had their hair pulled by Respondent in a similar manner to the way in which Complainant #1 described the hair pulling to have occurred. While the witnesses who reported Respondent pulled their hair did not file complaints, and the Investigators are not making a finding of fact that the hair pulling occurred to the witnesses, the similarity in accounts provides convincing pattern evidence which the investigators find bolsters the credibility of Complainant #1.

The investigators recognize that 4 of the 10 [REDACTED] who may have worked in the same space as Complainant #1 when the hair pulling occurred, reported that they did not witness the conduct.

For a number of reasons the Investigators do not find that the [REDACTED]' failure to witness reduces the credibility of Complainant #1's accounts. A number of the [REDACTED] witnesses recognized that they mainly worked the night shift in 2018, while Complainant #1 and Respondent would mainly work during the daytime. Furthermore, while some of the [REDACTED] acknowledged that they believe they were aware of what was happening around them in the [REDACTED] room, the record reflects that the room was divided into pods of desks separated by partitions, and every workstation had multiple computer monitors which sat directly in front of each [REDACTED]. Furthermore, the record does not reflect that hair pulling by Respondent was accompanied by inappropriate statements and, while Complainant #1 verbally opposed Respondent's conduct, the record does not suggest that the opposition created a scene which would bring attention to the conduct such that it would be memorable years later by a [REDACTED] who may or may not have been in the same room at the time. For these reasons the Investigators do not find that the [REDACTED] witnesses' absence of recollection supports that the Respondent did not commit the hair-pulling conduct.

The Investigators also feel it is important to acknowledge the assertions by Respondent that Complainant #1 may not be credible because she did not provide notice of her complaint through an annual evaluation form which, per Respondent, states "do you have a harassment complaint to make—yes or no." A copy of a form which asks the question was not provided to investigators. Assuming the evaluation form contains such a question, the Investigators find that it would be unreasonable to give weight to absence of reporting such conduct on form that is otherwise reviewed by Department leadership which, at the time, included Respondent.

c. Application of Policy

The pulling Complainant #1's hair by Respondent is alleged to have occurred throughout the 2018 calendar year. During 2018, two policies which could cover the hair pulling conduct were applicable: the Code of Conduct, and the Harassment Policy. Both policies prohibit certain sexual behavior by officers while in the workplace and on duty. According to Respondent, he served as KDPS Assistant Chief of Operations during the 2018 calendar year.

The Investigators find that the hair pulling conduct committed by Respondent against Complainant #1 constitutes sexual behavior. Complainant #1 reported that Respondent would move his hand up the back of her head with his fingers spread apart and touching her scalp, then would pull her head back using the hand that was in her hair. Complainant #1 described the conduct as sexual and intimate. Respondent denied the conduct, so his perspective regarding the intent of the touch is not part of the record. The Investigators acknowledge that Respondent did not accompany the actions with sexual statements, however, regardless of the intent of the touch, the Investigators find that the nature of the contact—spreading of his fingers, touching Complainant #1's scalp, and pulling her head back—makes the contact sexual in nature rather a form of horseplay or passive touch. Accordingly, such touch would violate the Code of Conduct.

The Harassment Policy requires additional analysis to determine whether a policy violation exists. The Harassment Policy prohibits unwelcome physical conduct of a sexual nature when submission to the conduct is made explicitly or implicitly a term or condition of employment.

The record reflects that, despite Complainant #1's continued rejection of Respondent's hair pulling conduct, Respondent continued to commit the conduct. In order for the conduct to stop, Complainant #1 was required to create a notice system within the workspace to allow her to effectively hide from Respondent when he would enter the space. In effect, if Complainant #1 wanted to remain at her desk to complete the task at hand, she would be required to endure Respondent pulling her hair. Accordingly, the hair pulling conduct of Respondent meets the definition of sexual harassment in that Complainant #1's submission to the conduct was implicitly made a term or condition of her employment.

2. Disciplining Complainant #1 for Failure to Acknowledge Greeting

a. Summary of Statements and Evidence

On June 28, 2022, Complainant #1 was returning from lunch with Witness #1 and Witness #2. As the three employees walked through the parking lot to the entrance of the building, they passed the Respondent, who was unloading basketballs from his KDPS vehicle.⁸ As the group passed by the Respondent's vehicle, the Respondent acknowledged the group with a greeting. Witness #1 and Witness #2 replied back to the Respondent's greeting. Complainant #1 reports that in response to the Respondent's greeting, she smiled and nodded. The Respondent reports that Complainant #1 did not acknowledge his greeting in any way. Witness #1 and Witness #2 did not hear the Complainant respond to the Respondent's greeting and were otherwise unable to verify whether the Complainant smiled and nodded or took no action to respond from their vantage point. The Respondent made a comment to Complainant #1 requesting that she come over to where the Respondent was standing and Complainant #1 responded with a phrase similar to "No thank you." Complainant #1 reports that she thought the Respondent was joking and responded accordingly.

The Respondent replied to that comment by stating something to the effect of "come here." At this time, Witness #1 and Witness #2 were waiting near the entrance of the building under the canopy. Witness #1 reported that she waited for the Complainant during the conversation with the Respondent because she thought the Respondent was being unprofessional and she "knew the history," referring to past instances where Complainant #1 reported to Witness #1 that the Respondent pulled the Complainant's hair and the Complainant began taking steps to avoid the Respondent.

At the beginning of the encounter, the Complainant was near the Respondent's vehicle within sight of Witness #1 and Witness #2. At some point, the Respondent walked around his vehicle closer to the Complainant. All parties present at the time of the encounter, including the Respondent, acknowledge that the Respondent spoke to the Complainant in a raised voice. All parties noted that Witness #1 and Witness #2 were under the canopy, described as approximately 20 feet away from where the Complainant and the Respondent were standing. The accounts of Witness #1 and Witness #2 regarding the comments of the Respondent were consistent with the statements of

⁸ At this time, Witness #11 and Witness #18 had already entered the building after assisting the Respondent with the basketballs.

Complainant #1 and the Respondent confirming that the Respondent's voice was loud enough for the witnesses to hear them from approximately 20 feet away.

While the accounts of the specific language used differs, the Respondent communicated to Complainant #1 that she must acknowledge him and discussed this lack of acknowledgement in relation to Department policies and procedures. Both Witness #1 and Witness #2 noted that the exchange between Complainant #1 and the Respondent was unusual. Witness #1 stated that the encounter reminded him of "someone scolding their dog". Witness #2 noted that she had not seen the Respondent get upset about someone saying "hi" or acknowledging him and stated that she had never seen the Respondent act that way before with another employee. Complainant #1 stated that she stood in place until the Respondent finished screaming at her and walked away.

While unable to confirm the specific language used other than through the statements of Complainant #1 and Respondent, and those facts corroborated by Witness #1 and Witness #2, surveillance footage obtained from the City confirms the timeline of reported events as follows (time designated in "[minutes]:[seconds]" of footage):

- 2:20 The Complainant, Witness #1, and Witness #2 walk by the Respondent's truck while the Respondent is standing on the driver's side of the vehicle.
- 2:40 The Complainant, Witness #1, and Witness #2 all stop towards the back of the Respondent's vehicle.
- 2:47 Witness #1 and Witness #2 others start moving towards the buildings canopy and the Complainant stays in place.
- 2:50 The Complainant starts moving towards the building's canopy.
- 2:56 The Respondent moves from the driver side to the back of his car.
- 3:01 The Complainant stops.
- 3:11 The Complainant walks toward the Respondent.
- 3:18 The Complainant stops in front of the Respondent.
- 3:46 The Respondent moves in front of the Complainant.
- 3:50-59 The Respondent addresses the Complainant.
- 4:00 The Complainant walks away.

Complainant #1 was unable to identify why the Respondent may have responded in this manner and noted that there was not any tension between the Respondent and Complainant #1 preceding this encounter. The Respondent acknowledged this encounter and the reason for it, explaining that Complainant #1's "unacceptable and unexcused behavior had been going on too long" and that in the encounter in the parking lot he "decided to address it." The Respondent said that he had seen Complainant #1 not be responsive to him three or four times over the past year. The Respondent considered this a problem, as it was disrespectful to the office of the Chief.

To support the allegation that Complainant #1 was disrespectful and ignored greetings from the Respondent in the past, the Respondent provided the names of other KDPS employees who had reported similar encounters with Complainant #1. When interviewed by the investigators, these witnesses noted that there had been incidents in the past where Complainant #1 had been non-

responsive when greeted or had what was described as an “attitude” while at work. Witness #11 served as Complainant #1’s indirect supervisor and noted that he had previously addressed issues of workplace attitude and insubordination with Complainant #1. Witness # 14 shared an encounter with Complainant #1 in which Complainant #1 did not return his greeting and Witness #14 stated that he informed Witness #11 as the Complainant’s supervisor of this interaction. Witness #15 reported a similar encounter in which he visited the [REDACTED] Office and greeted Complainant #1, Witness #1, and Witness #2 and received a response from Witness #1 and Witness #2 but not from Complainant #1. Witness #15 stated that he said “I said good morning” and Complainant #1 replied “Oh, good morning” and smiled.

In contrast, other KDPS employees noted that they had previously not responded to a greeting by the Respondent and faced no consequences and/or received no direct response from the Respondent. Of all the interviews conducted by the Investigators, 7 Witnesses stated that they were unaware of the Respondent’s preferences that all employees acknowledge or otherwise say “hi” to the Respondent and or that such conduct may be a violation of KDPS policies, while 2 witnesses were aware of this preference. Three witnesses stated that they could remember a situation where they did not say “hi” or otherwise acknowledge the Respondent and were not reprimanded for their behavior. One witness recalled a situation where the Respondent asked a KDPS employee to respond back when addressed.

After the encounter in the parking lot, the Respondent reported that when he returned to the building, he spoke with Complainant #2, who was working in her capacity as an employee of [REDACTED], who happened to be on a Zoom call with [REDACTED] at the time, also within her capacity as [REDACTED]. After informing [REDACTED] of what had taken place in the parking lot with Complainant #1, the Respondent reported that [REDACTED] verified this account and stated that the Respondent was angry and [REDACTED] didn’t trust him to be near Complainant #1 without “losing his cool.” [REDACTED] felt the need to protect both the Respondent and Complainant #1.

b. Findings of Fact

Complainant #1 and Respondent largely agree on the specifics of what occurred during the encounter. The Investigators address and make findings regarding the following areas of disagreement and, unless otherwise noted, adopt the foregoing summary of statements and evidence as their findings of fact.

The Investigators do not make a finding regarding whether or not Complainant #1 smiled and nodded at Respondent when passing by him, or whether she did not acknowledge him at all. For the reasons stated below, the Investigators do not believe a finding of fact is necessary for analysis regarding whether a policy violation exists.

With regard to the nature of the interaction between Complainant #1 and Respondent in the parking lot, the Investigators find that the Respondent’s approach to addressing his concerns related to Complainant #1’s perceived failure to address him were uncivil and fell outside the boundaries of

acceptable employee supervision. One of the witnesses to the interaction described Respondent's conduct as unprofessional and the other witness described that Respondent was addressing Complainant #1 as though he was "scolding a dog." Both witnesses acknowledged that they could hear Respondent addressing Complainant from 20 feet away. Complainant #1 felt that Respondent was "screaming" at her. Respondent acknowledged that he raised his voice. [REDACTED] indicated that, after the interaction, Respondent was upset enough with Complainant #1 that [REDACTED] did not trust Respondent to be close to Complainant #1 without "losing his cool."⁹

The Investigators adopt as fact the above accounts from witnesses that others in the Department, including Respondent, felt that Complainant #1 had a history of being rude and disrespectful with regard to how she interacted with some in the Department. Regardless of the history, the Investigators maintain that the encounter on June 28, 2022 fell outside of the boundaries of acceptable supervision of Complainant #1. The conduct which Respondent #1 is alleged to have committed is an omission of courtesy—the absence of acknowledging Respondent's greetings. The Investigators find that the Respondent's subsequent demand that Complainant #1 come over to him and his parking lot address, described as unprofessional and like "someone scolding their dog," was something more than supervision required, particularly in light of the fact that her peers were witnesses to the reprimand.

Respondent is not the primary supervisor for Complainant #1. The record reflects that there are multiple other employees who do not say hi to Respondent, and none of them have been disciplined by Respondent or addressed by him in a manner similar to what Respondent displayed towards Complainant #1 on June 28, 2022. Based on the Investigators' determination that Respondent had pulled Complainant #1's hair on multiple occasions despite her requests that he not do so, and her subsequent need to take evasive action to prevent further hair pulling, the Investigators find that Respondent treated Complainant differently. However, it is not clear that Respondent knew or should have known that the reason why Complainant may not have addressed Respondent was due to his previous hair pulling, as that had not occurred for several years according to Complainant. The Investigators note that Respondent's suggestion that he was reprimanding Complainant #1 for her failure to acknowledge him could be pretext for Complainant #1's rejection of his previous conduct, but that there is insufficient evidence available to substantiate that this was, in fact, pretext for the discipline.

c. Application of Policy

Both the Harassment Policy and the Standards of Conduct policy are applicable to Respondent's conduct in the parking lot.

The Harassment policy includes a provision prohibiting retaliation, which includes treating a person differently or engaging in acts of reprisal or intimidation against a person when they opposed a discriminatory practice. As stated above, the Investigators had insufficient evidence to

⁹ [REDACTED] described Respondent's reaction to Investigators in an interview before the alleged conduct by Respondent that resulted in [REDACTED] filing a complaint.

find that Respondent's actions in reprimanding Complainant #1 in the parking lot for her failure to acknowledge him were actually pretext for Complainant #1's rejection of his previous hair pulling advances. As stated, the record reflects that other employees would not acknowledge Respondent and would not be subjected to the same reprisal. While there is evidence of differential treatment of Complainant #1, there was insufficient evidence that the differential treatment was connected to Complainant #1's concerns about hair pulling, or her avoidance of Respondent since arriving in the [REDACTED] Office. Accordingly, the investigators cannot find the conduct to constitute Retaliation in violation of the Harassment Policy.

The Standards of Conduct policy is also implicated by Respondent's actions in the parking lot. As described above, the Investigators find Respondent's address of Complainant #1 were uncivil and fell outside of the boundaries of acceptable employee supervision. Based on descriptions by witnesses, there is no doubt that Respondent's actions toward Complainant #1 were discourteous. Further, because the record reflects that other employees did not acknowledge Respondent and were not subjected to the same reprisals, it is clear that Respondent was exercising unequal or disparate authority toward Complainant #1 for an improper purpose. Specifically, it appears that, based on Respondent's comments, he felt that he was entitled to communication from Complainant #1, and that her failure to do so was insufficiently deferential to his office. His behavior, in front of her peers and colleagues, constituted an inappropriate exercise of his power as her ultimate supervisor, which was improper. His anger was so extreme that [REDACTED] felt the need to send Complainant #1 home, in part to protect Complainant #1 from further similar conduct by Respondent. Accordingly, the Investigators also find that Respondent's actions toward Complainant #1 in the parking lot constitutes a violation of the Standards of Conduct policy.

B. Complainant #2

1. Allegation of Sexual Harassment

a. Summary of Statements and Evidence

Complainant #2, a female City employee working within [REDACTED] [REDACTED], alleges that early in the summer of 2022, sometime several weeks prior to the June 28, 2022 encounter between Complainant #1 and the Respondent, Complainant #2 was visiting the Respondent in his office when the Respondent noted that "something doesn't seem right" with Complainant #2. Complainant #2 said that she responded that it was probably her ex or her sister that was getting her down, and that she wished she had someone to talk to. Complainant #2 said that she told the Respondent that her [REDACTED] told her that she is "badass" and "doesn't take crap." The Complainant said, at that point in the conversation, the Respondent asked if he had Complainant #2's permission to "speak frankly." She responded, "Sure." The Respondent then stated, "If I pinned you up against that wall, I bet you'd melt."

At the time of this alleged incident, Complainant #2 did not share information about the alleged incident with anyone. Complainant #2 expressed that she had concerns about making a report and that, while she wanted to protect others, she was worried that her name would get out. Complainant

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#2 considered that she had not had any similar experiences with the Respondent and had not heard about anyone else having similar concerns, so she thought it might be a “one off.” Complainant #2, out of concern for coming forward, decided to let it be, and if something happened again, told herself that she would do something.

On August 10, 2022, Complainant #2 met with Complainant #3, [REDACTED], and had a discussion about the pending investigation of the Complainant filed by Complainant #1. During the course of this conversation, Complainant #2 shared details of the Respondent’s comments to Complainant #2 with Complainant #3. At the time Complainant #2 shared the report with Complainant #3, Complainant #2 was unaware that Complainant #3 had experienced similar behavior from the Respondent. Complainant #3 did not share her experience with Complainant #2 during the conversation on August 10, 2022. Interviews with Complainant #3 corroborate this and in her independent statements to the Investigators, Complainant #3 shared that Complainant #2 reported to her that the Respondent “said something about pinning her against a wall and making her melt.” On August 12, 2022, Complainant #2 filed an official Complaint of Discrimination and Harassment specific to the comments allegedly made by the Respondent earlier in the summer.

The Investigation of Complainant #2’s Complaint of Discrimination and Harassment was limited to interviews of Complainant #2 and the Respondent, as each party confirmed that there were no witnesses to the reported conduct. Further, the Investigators were unable to identify any commonality of timing and place between the two accounts of the involved parties. While this does not necessarily speak to the credibility of the report, it should be noted as a limiting factor in the investigation.

In her written Complaint and subsequent interviews with the Investigators, Complainant #2 is consistent in her recollection of events. While unable to identify a specific date or to verify the full context of the conversation preceding the alleged comment by the Respondent, Complainant #2 stated that she was “100% sure” that the comment was made while in the Respondent’s office; she remained consistent in her report that the Respondent had only used a phrase requesting permission to “speak frankly” with the Complainant one time and that the use of this phrase only took place prior to the comment “If I pinned you up against that wall, I bet you’d melt.”; and she recalls sharing with the Respondent that [REDACTED] said she was a “bad ass” and “doesn’t take crap” prior to the Respondent’s comments.

The Respondent denies ever saying “If I pinned you up against that wall, I bet you’d melt” or something similar to Complainant #2. Beyond the specific comments, the Respondent reported that he has never spoken to Complainant #2 in a “disrespectful or sexual way”. The Respondent stated that he was upset that Complainant #2 said that what he is alleged to have said “sounded sexual.” The Respondent said that to say something “sounded sexual” was really short-sighted. The Respondent said that he did not mean any comments to be sexual and that he does not have that kind of relationship with Complainant #2. The Respondent was frustrated because if Complainant #2 had told him she thought the comment sounded sexual, he could have explained himself.

The Respondent was unable to identify a specific encounter with Complainant #2 in which he made comments that could have been perceived, even if incorrectly, in a similar manner. However, the Respondent was able to recall a conversation he had with Complainant #2 in which he used a phrase similar to “Can I be frank?” Specifically, the Respondent stated that he used this phrase with Complainant #2 within the context of a conversation about KDPS recruiting [REDACTED]. The Respondent recalled that Complainant #2 said that [REDACTED] was not going to work for “this city” which the Respondent reported meant that Complainant #2 had concerns about [REDACTED] working in a black community. In response to Complainant #2’s comment, the Respondent stated that he said “Can I be frank?” to which the Respondent alleges Complainant #2 responded “yes.” The Respondent reported that he then explained that KDPS would train [REDACTED] “in any situation he might come up against.” The Respondent reported that this conversation took place in Complainant #2’s office while Complainant #2 was seated at her desk and the Respondent was seated in a chair approximately 5-8 feet away from Complainant #2. The Respondent’s recollection is thus directly contrary to Complainant #2’s specific memory that the Respondent only used the phrase “Can I be frank?” with her one time and that it occurred prior to the alleged comments while in the Respondent’s office. In her interview with the Investigators, Complainant #2 stated that the conversation with the Respondent could have included a discussion about KDPS’s attempting to recruit [REDACTED] and clarified that she had multiple conversations with the Respondent regarding recruiting [REDACTED].

Complainant #2 acknowledge that the alleged statement by the Respondent was uncomfortable for her, but reported she thought the Respondent made the comment because he felt comfortable with her. Complainant #2 reported that she questioned herself as to whether she had said or acted in a way that provoked the alleged comment, but determined that she had not and it was not OK. Complainant #2 added that she was concerned that if the Respondent would make the alleged comments to her, knowing her position and the fact that she did not report to him, what might he be saying to the people who actually reported to him? However, Complainant #2 also shared that the alleged comments by the Respondent did not change how she functioned at her job, and noted that there is a “very healthy respect” for her position and for her that she has worked hard to cultivate.

Complainant #2 reported that she did not feel intimidated, and verified that the Respondent did not touch her, nor did she feel like he would when the comment was made. Complainant #2 also stated that she did not worry about being alone with the Respondent on future occasions. Complainant #2 reported that she loves her job and does the best job she can, and prides herself on being as honest as she can be. Complainant #2 stated that going through the reporting process is a “big deal” because she has to be in a position where she has to work with the Respondent every day. Complainant #2 stated that the situation made her sad, and that there was no real benefit to coming forward except if it helps other people.

b. Findings of Fact

There is no video or other documentary evidence available which provides a contemporaneous account of the allegations from the early summer of 2022. Furthermore, there are no witnesses to the allegation other than the parties themselves. The Investigators were left to the recollection of

the parties. For the following reasons and reasons stated elsewhere in this report, the Investigators find that Respondent made the comment alleged by Complainant #2.

The Investigators find Complainant #2's account credible despite her inability to recall a specific date that the conduct occurred. Complainant #2 identified with certainty where the statement was made and the specific language that was used in the immediate lead-up to the statement. She recalled Respondent asking whether he could "speak frankly" before making the statement, noting that she had never heard Respondent use the statement before. Respondent acknowledged he recalled that he had, at some point, asked whether he could "be frank" with Complainant #2, but it was in the context of a conversation related to recruitment of [REDACTED].

The Investigators find that the common understanding of a request to "be frank" suggests that the requestor intends to provide honest information that, oftentimes, the recipient of the information may not want to hear or may not be comfortable with. In reviewing when the phrase was likely to be used, the Investigators find that it is less likely that the term would be used in the context of Respondent recruiting [REDACTED] to the Department, as he suggested. If Respondent was attempting to persuade Complainant #2 to ask [REDACTED] to join the Department and wanted to represent that the Department would train [REDACTED], it makes less sense to the Investigators that he would need to preface the information with a request to be honest, nor would it make sense that he would feel that Complainant #2 would not want to know that [REDACTED] would be trained. In the alternative, Complainant #2's account that the phrase was used in the context of preparing Complainant #2 for a statement challenging whether she had the strength and resolve that [REDACTED] believed she had—in the form of posing a hypothetical, and unprovoked, act of sexual dominance by Respondent, the leader of a Department that she works with—is the more credible context in which the term would be used.

The Investigators further find that Complainant #2 has little motive to fabricate that Respondent made such a comment. The Record does not reflect that Complainant #2 did not like Respondent or otherwise was at odds with him. To the contrary, both Complainant #2 and Respondent described mutual respect and admiration for one another in the workplace. Furthermore, Complainant #2 had little to gain from reporting. At the time the statement was made, Complainant #2 was aware that her reporting of the comment could upend the respect that she felt she had cultivated related to her role in the Department.

Finally, the Investigators find that the report of a similar sexualized statement directed toward Complainant #3 is persuasive pattern evidence which bolsters Complainant #2's credibility.

c. Application of Policy

Per KDPS Policy, The Department prohibits all forms of discrimination and discriminatory harassment, including perceived sexual harassment. The applicable policy states that sexual harassment includes, but is not limited to, unwelcome sexual advances, requests for sexual favors or other verbal, visual or physical conduct of a sexual nature when:

(c) Such conduct has the purpose or effect of substantially interfering with a member's work performance or creating an intimidating, hostile, or offensive work environment.

The Investigators find that Respondent made the comment alleged by Complainant #2, specifically "If I pinned you up against that wall, I bet you'd melt." As demonstrated through Complainant #2's own report and through the eyes of a reasonable person under similar circumstances, it is clear that the comment is sexual in nature. In making her report to the Investigators, Complainant #2 shared that she definitely viewed the comment as sexual in nature. Further, the alleged comment without dispute is remarkably similar to the sexualized comment made by the Respondent to Complainant #3, discussed further below. Both comments leave very little room for other reasonable interpretations of meaning.

By the Respondent's own admission, Complainant #2 and the Respondent do not have a relationship, professional or personal, in which comments of a sexual nature would have been considered normal or appropriate. Complainant #2's statements confirmed this. Complainant #2 reported that the Respondent's statement was "uncomfortable" to her and that she wanted to leave the Respondent's office after the comment was made. Accordingly, it is clear that the Respondent's comment was an unwelcome comment of a sexual nature.

Next, the Investigators must consider whether this conduct had the purpose or effect of substantially interfering with Complainant #2's work performance or creating an intimidating, hostile, or offensive work environment. In doing so, the Investigators look to such factors as the frequency of the conduct, the severity of the conduct, whether it unreasonably interferes with an employee's work performance, and whether it is physically threatening or humiliating.

Frequency - In this case, the conduct as alleged consists of a single utterance. It does not constitute frequent behavior with regard to Complainant #2.

Severity - While the actual comment itself does not appear through Complainant #2's statements to have had a severe psychological impact on Complainant #2, Complainant #2 expressed that the primary impact was really her struggle in terms of whether to report, noting that it feels like it is part of her job to report. Complainant #2 stated she was and is scared to come forward. She is worried about her name getting into the public eye.

This is a very reasonable concern considering the Respondent's senior role within the leadership of KDPS and his public profile and visibility. Complainant #2 shared that seeking resolution through reporting is a "big deal" because per the requirements of her role as a [REDACTED], Complainant #2 would be in a position where she has to work with the Respondent every day. Complainant #2 has reported that this has had an emotional impact on her.

Interference with Work - At the time of the Respondent's comment, Complainant #2 was employed with the City's [REDACTED]. Complainant #2 engaged with the [REDACTED].

Respondent on a regular basis as part of her job. However, because Complainant #2 was physically located within KDPS headquarters, her role in [REDACTED] intentionally did not require her to participate in enforcement actions, including investigations or disciplinary matters, for KDPS. Accordingly, while the Respondent's comments to Complainant #2 may have made a similarly situated employee reasonably uncomfortable working with the Respondent, the Respondent's comments did not directly impact or interrupt Complainant #2's ability to perform the functions of her role.

Threats/Humiliation – Complainant #2 indicated that she was not concerned Respondent would actually follow through with his statement. Complainant #2 indicated that while the comment itself made her uncomfortable and that she immediately wanted to leave the Respondent's office, Complainant #2 felt that she had cultivated enough respect in her role that the impact of the comment may be mitigated.

The comment had a moderate impact on Complainant #2, and certainly more of an impact than is acceptable in the professional environment. However, the other factors weigh against a policy violation, in that it was an isolated occurrence that was not threatening, did not humiliate Complainant #2, and did not interfere with her work. Therefore, with regard to this statement towards Complainant #2, the Investigators find that Respondent did not engage in a Policy violation.

Whether this comment, in conjunction with other behavior by Respondent, rises to the level of sexual harassment in total is addressed below.

The KDPS Standards of Conduct policy is also applicable the alleged conduct. The Standards of Conduct policy prohibits certain conduct including that which is “[d]iscourteous, disrespectful or discriminatory treatment of any member of the public or any member of this department or the City”, and “[a]ny other on- or off-duty conduct which any member knows or reasonably should know is unbecoming a member of this department, is contrary to good order, efficiency or morale, or tends to reflect unfavorably upon this department or its members.” As noted above, the Investigators find that Respondent made the statement alleged by Complainant #2. Furthermore the Investigators found that the statement unnecessarily challenged Complainant #2 in the form of posing a hypothetical and unprovoked act of sexual dominance by Respondent, the leader of a Department that she works with. While the Investigators do not find that the single statement rises to the level of discrimination as defined by Department Policies, the Investigators do find that, based on the plain meaning of the terms in the Standards of Conduct policy, the statement and the context in which it was used was discourteous, disrespectful, and that Respondent should have known the statement was unbecoming a member of the Department. In addition, Respondent should have known that making such a statement to [REDACTED] is contrary to good order, efficiency and morale, and tends to reflect unfavorably upon the Department. Any reasonable leader at KDPS should understand that making sexualized comments to Complainant #2, a [REDACTED] puts the [REDACTED] in a Hobson's choice of reporting Respondent's conduct and impairing a relationship of trust with the leader of KDPS, or allowing the conduct to go unaddressed in contravention of [REDACTED] role. There is no doubt that, either choice Complainant #2 was left with in response to

Respondent's comment would have a resoundingly negative impact on the Department's order, morale, and image. For the above reasons, the Investigators find that Respondent violated the Standards of Conduct policy with regard to Complainant #2.

C. Complainant #3

1. Allegation of Sexual Harassment

a. Summary of Statements and Evidence

On Tuesday, August 9, 2022, at approximately 1:50pm, Complainant #3 reported that she entered Public Safety Headquarters and walked down the hall in the administration wing, ultimately coming across Witness #13 and Witness #19. Complainant #3 stopped to have a conversation with Witness #13 and Witness #19 and during that conversation, the Respondent came out of his conference room and tapped Complainant #3 on the shoulder. Respondent said he needed to speak with Complainant #2. This account is corroborated by Witness #13.

Complainant #3 reported that the Respondent then grabbed Complainant #3 by her purse which was on her shoulder and arm and stated that he needed to see Complainant #3 "now." Witness #13 stated that he did not see the Respondent grab Complainant #3 by her purse.

Complainant #3 reported that she followed the Respondent through conference room into the Respondent's office. The Respondent reportedly shut the door behind them. Complainant #3 reported that she began walking to the conference table in the Respondent's office to sit down to speak with the Respondent as the Respondent was standing near the end of his desk in the open area just before the conference table. Complainant #3 reported that the Respondent then stated, "You look so good...I could lay you down on that table right now."

The Respondent acknowledges that he met with Complainant #3 on this same date around this same time in his office, however, the Respondent states that the meeting was specifically to discuss a disciplinary hearing. The Respondent also acknowledges that he said to Complainant #3 "No, you look good, you could get thrown up on a table." The Respondent explained that in making that comment, he was trying to give Complainant #3 a "boost" as the Respondent reported that Complainant #3 had recently lost a significant amount of weight, a fact that Complainant #3 corroborates, and allegedly said prior to the Respondent's comment that she "did not look good." Complainant #3 denies making this comment or any similar comments and noted that she would not say that she "did not look good" because she didn't feel that way. However, Complainant #3 did state that the Respondent would tell her she was looking good, that she should keep going, and that she was probably feeling better. Complainant #3 said she had never felt anything but support for her weight loss, and didn't feel that previous comments by the Respondent were sexual.

In reflection upon making this comment to Complainant #3, the Respondent said, "I have to admit that's what it may sound like, but it was not sexual in nature. We were behind closed doors. I was trying to give her a boost as I had done in the past. I was basically saying good, keep it going, we got you, we're here for you, we're a team." Further, the Respondent alleges that his relationship

with Complainant #3 was one in which a comment such as this may not have been considered inappropriate and that he and Complainant #3 would speak more casually with each other behind closed doors as friends. Specifically, the Respondent alleges that Complainant #3 has used sexualized language directed at the Respondent in the past. While the Respondent has not filed a report of sexual harassment or any other alleged misconduct against Complainant #3 and these allegations are beyond the scope of this investigation, it should be noted that the Respondent reports that Complainant #3 would make comments such as “You look so, so good”, “You’re looking delicious”, and “You are looking sharp,” typically when the Respondent is dressed in a business suit. Complainant #3 was made aware of these allegations and stated that she did not say any of those things. Complainant #3 also indicated that it was “not in [her] language to use the word ‘delicious.’”

While the Respondent acknowledges that he said to Complainant #3 “no, you look good, you could get thrown up on a table,” other aspects of the conversation between the Respondent and Complainant #3 are in dispute and may be relevant for a determination of credibility. Specifically, Complainant #3 reports that following the Respondent’s comments, she stated “do you know who you’re talking to? I am [REDACTED]. You crossed a line with me, [REDACTED]. What are you thinking?” The Respondent states that the Complainant had no response to his comment and specifically that Complainant #3 did not make these comments.

Further, Complainant #3 and the Respondent both report that they met on August 11, 2022 in the Complainant’s office. Complainant #3 reports that she scheduled this meeting for the purpose of discussing the Respondent’s comments to her on August 9th. Both parties agree that they discussed [REDACTED]. Further, both parties agree that Complainant #3 discussed the comments the Respondent allegedly made to her on August 9th. However, the details of these specific comments are in dispute. Specifically, Complainant #3 stated that she told the Respondent that his behavior was “unacceptable, egregious, not tolerated.” Complainant #3 reported that the Respondent put his head down and told Complainant #3 that he knew what she meant. Complainant #3 reported that the Respondent often uses the phrase “plays too much,” and Complainant #3 stated that she made sure to tell him that he “plays too much” and that now there is a “line in concrete.” Complainant #3 said that the Respondent’s “behavior in my office clearly told me that he owned what he did.”

To the contrary, the Respondent reported that Complainant #3 brought him into her office and told him what was alleged by Complainant #1 and that they also discussed [REDACTED]. The Respondent alleged that Complainant #3 said “[Respondent], really? [Complainant #1]? [Witness #5]? [Respondent], I look better than them.”¹⁰

The Respondent reported that Complainant #3 told him to keep his mouth shut and she would take care of him in relation to the pending investigation. The Respondent reported that Complainant #3 said she would deny having this conversation with him. Specific to the comments made by the

¹⁰ It should be noted that on August 11, 2022, Complainant #2 had reported the alleged comments by the Respondent to Complainant #3 but had not yet filed an official Complaint. Complainant #3 filed a Complaint of Discrimination and Harassment on August 12, 2022.

Respondent on August 9th, the Respondent stated that Complainant #3 said, “you can’t say that to me.” The Respondent said at this time his head was down because his mind was still on Complainant #1’s allegations. Complainant #3 denied speaking to the Respondent about Complainant #1 and stated that “that it would not have been ethical to do so”. Complainant #3 also denied saying “[Respondent], really? [Complainant #1]? [Witness #5]? [Respondent], I look better than them” or informing the Respondent that she would “take care of him” in response to the pending investigation.

Reflecting upon the impact of the Respondent’s alleged statements, Complainant #3 stated “I feel like I’m tough enough to handle what happened to me, but I’m worried about where he will end up. He has told too many people about [Complainant #1]. I am worried he will ruin my career.” Complainant #3 further stated “He put me in a position as a white woman having to file on a black man.” Complainant #3 expressed concern, “He’s gonna know it was me” but added “Everything I wrote is true. But it sucks.” Complainant #3 reported that she is not worried that the Respondent is “going to come after her” but specified that she “worked really hard to build trust [REDACTED]”, further stating that “to have something like this happen at this level in the environment I’m in, that’s what sucks.”

b. Findings of Fact

As with the report of Complainant #2, evidence related to the report of Complainant #3 does not include witnesses to the allegation other than the parties themselves. However, the Investigators find that Complainant #3’s complaint of her interactions with Respondent within days of the alleged conduct constitutes persuasive documentary evidence of the interaction. That said, the Investigators were ultimately left to the recollection of the parties. For the following reasons and the reasons stated elsewhere in this report, the Investigators find that Respondent made the comment alleged by Complainant #3 and, other than referenced below, adopted as fact the statements of Complainant #3.

Complainant #3 and Respondent both agree that Respondent made a statement to Complainant #3 that, on its face, included a sexual reference. Respondent’s only disagreement with the content of the statement he made to Complainant #3 is whether Respondent said in the statement that “he” could throw her up on his conference table, or “someone” else could do so with Respondent suggesting that he did not say he could do so, but that someone else could. Respondent suggests that the intent of his statement was not sexual in nature, but was intended as a “boost” to support Complainant #3’s weight loss, which had been a previous topic of discussion. Complainant #3 acknowledged that she did not believe that Respondent actually intended to act on the statement. The Investigators adopt as fact that Respondent intended for the statement to provide support for Complainant #3’s weight loss. For the purpose of application of Department Policy, the Investigators do not believe it is necessary to make a finding of fact as to whether Respondent said that “he” could throw her up on the table or “someone else” could.

Respondent alleges that, prior to the incident, Complainant #3 made comments to him when he was in a business suit such as “You look so, so good”, “You’re looking delicious”, and “You are looking sharp.” While Respondent has not made a complaint regarding the alleged comments of

Complainant #3, the Investigators asked Complainant #3 whether she made the comments, as such information could be necessary in determining whether Respondent's comments were welcome. Complainant #3 denied making the comments and acknowledged that the term "delicious" was not something that she would use. There were no outside witnesses who corroborated that Complainant #3 made such statements. Based on the evidence of record, the Investigators find that Complainant #3 did not make the comments Respondent alleges she made.

Finally, the Investigators find that the report of a similar unprompted sexualized statement directed toward Complainant #2 is persuasive pattern evidence which bolsters Complainant #3's credibility.

c. Application of Policy

Per KDPS Policy, The Department prohibits all forms of discrimination and discriminatory harassment, including perceived sexual harassment. The applicable policy states that sexual harassment includes, but is not limited to, unwelcome sexual advances, requests for sexual favors or other verbal, visual or physical conduct of a sexual nature when:

- (c) Such conduct has the purpose or effect of substantially interfering with a member's work performance or creating an intimidating, hostile, or offensive work environment.

The Respondent admits and takes responsibility for saying to Complainant #3 "no, you look good, you could get thrown up on a table" on August 9, 2022 while speaking to Complainant #3 in the Respondent's office. The comment, taken literally, describes a sexual act within the workplace, specifically on the conference table within the private office of the leadership of the department. The Respondent acknowledges that the comment may have been interpreted as sexual in nature and states that he was attempting to give Complainant #3 a "boost" in light of the change in her physical appearance. Accordingly, by the Respondent's own admission, through Complainant #3's own report, and through the eyes of a reasonable person under similar circumstances, it is clear that the comment is sexual in nature.

Further, Complainant #3's reported actions immediately after the comment was made, her comments to the Respondent 3 days following the comment, and her consistent statements to the Investigators and in her initial Complaint of Discrimination and Harassment, detail that the comment was unwelcome. While the Respondent denies such took place, in response to the Respondent's comment, Complainant #3 stated "do you know who you're talking to? [REDACTED] [REDACTED] You crossed a line with me, [REDACTED]. What are you thinking?" Even if such comments cannot be corroborated, they are consistent with Complainant #3 and Respondent's accounts of a conversation that took place at Complainant #3's request in her office on August 11, 2022 in which both parties agree that Complainant #3 said something to the effect of "you can't say that to me" in reflection upon the Respondent's comment to Complainant #3 earlier in the week.

Next, the Investigators must consider whether this conduct had the purpose or effect of substantially interfering with Complainant #3's work performance or creating an intimidating,

hostile, or offensive work environment. In doing so, the Investigators look to such factors as the frequency of the conduct, the severity of the conduct, whether it unreasonably interferes with an employee's work performance, and whether it is physically threatening or humiliating.

Frequency – In this case, the conduct as alleged consists of a single utterance. It does not constitute frequent behavior with regard to Complainant #3.

Severity – Like Complainant #2, Complainant #3 reported that she struggled with whether to report the conduct, and that the need to report became clear to her when she became aware of Complainant #2's complaint. Complainant #3 also reported concern about coming forward in a public manner.

Interference with Work - When making her initial report, Complainant #3 reported that the Respondent's comment had affected her in such a way that she had considered resigning from her position. Specifically, Complainant #3 believed that the Respondent's comments could affect her career with the City and also had the potential of impacting her professional reputation if word of the encounter got "out to the community." Despite being advised of the protections of the Retaliation policy by the City Manager, an individual with the authority to enforce such a policy, Complainant #3 stated that as a "victim" she felt "very vulnerable." These concerns are only amplified by the fact that Complainant #3 was making this assessment of her personal and professional future, including immediate and long-term concerns and impact, through the lens of a seasoned [REDACTED] professional and [REDACTED]

Threats/Humiliation – Like Complainant #2, Complainant #3 also was not concerned that Respondent would actually follow through with his statement. However, Complainant #3 noted that Respondent knew where she lived, and she expressed concern about seeing him drive by or out in the community. She worried that he would ruin her career because she needed to come forward.

The comment had a more significant impact on Complainant #3, in part because in her role as [REDACTED] she was aware of the other allegations and the fact that she had experienced the behavior before she received the report of Respondent's earlier conduct toward Complainant #2. The impact was certainly more than is acceptable in the professional environment. However, the other factors weigh against a policy violation, in that it was an isolated occurrence that was not threatening, did not humiliate Complainant #3, and did not interfere substantially with her work, particularly due to her being based in another building. Therefore, with regard to this statement towards Complainant #3, the Investigators find that Respondent did not engage in a Policy violation as to Complainant #3.

The KDPS Standards of Conduct policy is also applicable the alleged conduct. The Standards of Conduct policy prohibits certain conduct including that which is "[d]iscourteous, disrespectful or discriminatory treatment of any member of the public or any member of this department or the City", and "[a]ny other on- or off-duty conduct which any member knows or reasonably should know is unbecoming a member of this department, is contrary to good order, efficiency or morale,

or tends to reflect unfavorably upon this department or its members.” As noted above, the Respondent admits that he made a sexual statement to Complainant #3 that, at a minimum, suggested that Complainant #3 looked so good that someone would want to engage in a sexual act with Complainant #3 on his conference table. While the Investigators do not find that the single statement rises to the level of discrimination as defined by Department Policies, the Investigators do find that, based on the plain meaning of the terms in the Standards of Conduct policy, the statement and the context in which it was used was discourteous, disrespectful, and that Respondent should have known the statement was unbecoming a member of the Department. In addition, Respondent should have known that making such a statement to [REDACTED] is contrary to good order, efficiency and morale, and tends to reflect unfavorably upon the Department. Any reasonable leader of KDPS should understand that making sexualized comments to Complainant #3, a [REDACTED], puts that [REDACTED] in a Hobson’s choice of reporting Respondent’s conduct and impairing a relationship of trust with the leader of the Department, or allowing the conduct to go unaddressed in contravention of their role with [REDACTED]. There is no doubt that either choice Complainant #3 was left with in response to Respondent’s comment would have a resoundingly negative impact on the Department’s order, morale, and image. For the above reasons, the Investigators find that Respondent violated the Standards of Conduct policy with regard to Complainant #3.

D. Collective Analysis of All Behavior

Each of the incidents described above occurred with regard to separate Complainants, and when analyzed separately, the conduct directed at Complainants #2 and #3 do not rise to the level of sexual harassment.

However, there is a clear pattern of unwelcome sexual behavior towards at least three individuals, with two of those occurring within a few months of each other and directed at [REDACTED] that are meant to assist KDPS. Respondent’s position is one of public trust. As he himself said during the investigation, the Office of the Chief of Police deserves respect. Here, however, that Office has resulted in repeated sexualized comments that, viewed from the relative positions of power in which they occurred, are incredibly troubling. They work to diminish the authority of two [REDACTED] charged with assisting the Department. They have resulted in an entire office unit taking steps to safeguard an employee from Respondent over the past few years. Taken together, they demonstrate an inappropriate application of sexualized power in the context of law enforcement interaction with civilians. While this does not rise to the level of a policy violation for purposes of sexual harassment under the circumstances and given the isolated nature of particular comments, it does not appear to be reflective of the professionalism expected of a police officer at KDPS.

The Investigators refer this matter back to City leadership to determine appropriate next steps.