

## STUDENTS

### **Sexual Harassment, Sexual Violence, Inappropriate Sexual Conduct and Non-retaliation-complaint procedures**

Sexual harassment, sexual violence, and inappropriate sexual conduct will not be tolerated and may constitute violations of School Board policy or regulation, federal or state law. The School Division does not condone or tolerate any form of sexual harassment, sexual violence inappropriate sexual conduct or retaliation for reporting such conduct. The School Division is committed to the creation and maintenance of an educational environment in which all individuals who participate in school programs and activities can do so in an atmosphere free from all forms of sexual harassment, sexual violence and inappropriate sexual conduct.

#### **A. Definition**

Unsolicited, unwelcome sexual overtures, conduct or advances, requests for sexual favors, and other verbal, written or physical conduct of a sexual nature constitute sexual harassment, sexual violence and/or inappropriate sexual conduct when any of the following conditions is present:

1. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's access, involvement or success in any School Division program, service or activity;
2. Submission to or rejection of such conduct by an individual is used as the basis of any decision affecting such individual;
3. Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance, or creating an intimidating, hostile, or offensive education environment; and
4. Such conduct by an employee, agent, or volunteer of the School Division that denies, limits, provides different, or conditions the provision of aid, benefits, services or treatments protected under Title IX.

#### **B. Prohibited conduct**

Sexual harassment, sexual violence and/or inappropriate sexual conduct may be verbal, non-verbal, physical, written, electronic or visual. It refers to behavior that is not welcome, that is personally offensive, that lowers morale and that, therefore, interferes with the individual's rights in the educational environment. Prohibited conduct that may be determined to be a violation under this Regulation [of Title IX Guidelines](#) is defined, but is not limited to:

1. Suggestive or obscene statements, noises, letters, notes, invitations, derogatory comments, slurs, jokes, epithets, assault, touching, fondling, sexual molestation or assault, impeding or blocking movement, leering, gestures, display of sexually suggestive actions, materials, objects, posters or cartoons, or other similar conduct. This includes electronic and verbal forms of communication;
2. Unwelcome sexual advances, propositions or other sexual comments such as: 1) sexually-oriented gestures, sounds, remarks, jokes, or comments about an individual's sexuality or sexual experience directed at or made in the presence of any other individual;
3. Physical assault or battery of a sexual nature, or the attempt thereof such as: 1) rape, sexual battery, molestation or attempts to commit those offenses, or committing an act with intent to cause fear in another of immediate bodily harm or death; 2) intentional physical contact which is sexual in nature, such as touching, pinching, patting, grabbing, brushing against or poking a student's body, or touching of the clothing covering the immediate area of the complainant's intimate body parts; and 3) other similar actions;
4. Continuing to express sexual interest after being informed that the interest is unwelcome.
5. Coercive sexual behaviors used to control, influence, or affect an individual's educational or employment opportunities, grades, and/or learning environment, opportunities to participate in or advance in school sponsored activities;
6. Offering or granting favors or benefits in exchange for sexual favors;
7. Preferential treatment or promise of preferential treatment for submitting to sexual conduct, including soliciting or attempting

to solicit any individual to engage in sexual activity for compensation or reward;

8. Prohibited retaliation shall be defined as adverse action against a covered individual because the individual (or closely-associated individual) engaged in protected activity
  - a. an “**adverse action**” is an action that is likely to keep a reasonable person from engaging in protected activity, including but not limited to threats, assault or battery, harassment, or other conduct that has the purpose of substantially interfering with a person’s access to or participation in the educational environment;
  - b. a “**covered individual**” is a person who has engaged in protected activity, such as filing a sexual harassment charge, or who is closely associated with an individual who has engaged in protected activity.
  - c. “**protected activity**” includes, but is not limited to: reasonable opposition to a practice believed to violate sexual harassment laws on behalf of oneself or others; participation in a sexual harassment proceeding, such as cooperating with an internal investigation of alleged sexual harassment practices or acting as a witness in an investigation by an outside agency or in litigation; and the asserting of one's rights, or objecting to such conduct.

### C. Grievance Procedures

In accordance with federal law and regulation, the procedures for filing, investigating and resolving grievances regarding violations of sexual harassment are set forth in the School Division’s Title IX guidance. If a complaint is determined not to be a violation of Title IX but may still constitute a violation of this Regulation, the complaint may be investigated as a complaint under Policy 5-7. The following procedure will be utilized for reporting, investigating and resolving complaints:

- ~~1. Any individual who believes that he/she has been the subject of sexual harassment, sexual violence, inappropriate sexual conduct or who has reason to know of or suspect that another individual is being subject to sexual harassment in the educational environment should report the alleged act immediately to the~~

principal, another school administrator or a teacher of the school or the individual may file a complaint with the Title IX Coordinator. Allegations of such conduct will be investigated by the principal and will be resolved as promptly, equitably and effectively as possible. The appropriate grade-level administrator shall provide investigation assistance as needed.

2. Any principal, other administrator, teacher, or the Title IX Coordinator who receives a complaint of such conduct by or against an individual is required to report immediately such complaint. The principal or Title IX Coordinator shall then immediately notify the Office of Student Leadership regarding the complaint. If the alleged incident involves the principal, the individual shall report such incident to the Title IX Coordinator or the Office of Student Leadership. If the complaint was made verbally, it will be reduced to written form within one business day and forward it to the principal, the Title IX Coordinator, and the Office of Student Leadership.
3. If the alleged incident involves harassment of a student or employee by another student, then the principal or designee shall investigate the incident and shall report the results of his/her investigation and the remedial action taken to the Title IX Coordinator as well as the Office of Student Leadership. The adult student or the parents or legal guardians of minor students shall be kept apprised of the outcome of the investigation and informed of the results and action taken.
4. If the alleged incident involves actions against a student by an employee, the principal or Title IX Coordinator shall immediately forward the complaint to the Department of Human Resources for investigation. If appropriate, the complaint shall be reported to Child Protective Services and/or the Police Department.
5. Investigations of complaints of violations under this Regulation should begin within a reasonable time after receipt of the complaint but in no circumstances later than one business day after receipt of the complaint. When appropriate, interim remedial measures should be taken to ensure that the alleged victim is safe and not subjected to further misconduct or retaliation pending the outcome of the investigation. The investigator should obtain written or verbal statements from the complainant, alleged victim, alleged perpetrator, and those witnesses with relevant information about the alleged conduct. The complainant, victim and alleged perpetrator should be given the opportunity to present evidence and witnesses regarding the

~~alleged conduct and to be provided the opportunity to see the information provided by the other parties. Except for extenuating circumstances, the complainant, victim, alleged perpetrator or witnesses should not be required confront each other. In accordance with applicable law, policy and regulation, the confidentiality of the investigation, allegations, evidence obtained and outcome of the investigation will be protected. The investigator will produce a written report within fifteen (15) business days of the beginning of the investigation. With the approval of the complainant or when extenuating circumstances apply, the time period for producing the report may be extended. Such extension will be for a reasonable time period but not longer than thirty (30) business days from the date that the report was originally due.~~

- ~~6.—The investigation report shall include the following:
  - a.—a summary of the complaint and supporting facts as reported by the complainant;
  - b.—a summary of the statements or evidence provided by the complainant, the victim, the alleged perpetrator and any relevant witnesses;
  - c.—any responses made by the complainant, victim or alleged perpetrator in response to the statements or evidence;
  - d.—a determination regarding whether a violation of this Regulation took place or whether the complaint was false;
  - e.—a recommendation regarding whether disciplinary action or another appropriate remedy should be taken;
  - f.—if appropriate, recommendations regarding other actions to be taken to ensure that the educational environment remains free from sexual harassment and/or retaliation;
  - g.—other appropriate information.~~
- ~~7.—In determining whether the alleged conduct constitutes a violation of this Regulation, it is necessary to evaluate the totality of the circumstances surrounding the conduct. The following factors should be considered:~~

- a. ~~the ages, intellectual or disability status of the parties involved;~~
- b. ~~the nature, severity and scope of the conduct;~~
- c. ~~whether the conduct is sexual in nature;~~
- d. ~~whether the conduct is offensive;~~
- e. ~~whether the conduct is unwelcome or inappropriate to the educational environment;~~
- f. ~~the frequency and duration of the behavior (a single incident may result in violation of this Regulation);~~
- g. ~~the number of persons involved in the behavior;~~
- h. ~~the context in which the conduct occurred;~~
- i. ~~where the conduct occurred;~~
- j. ~~whether there have been other incidents in the educational environment involving the same individuals;~~
- k. ~~whether the conduct adversely affected the individual's educational opportunities; and~~
- l. ~~the remedy sought by the complainant or victim and the alleged perpetrator's response to the remedy sought; and~~
- m. ~~any unusual or extenuating circumstances.~~

~~8.—Appeals of investigation report~~

~~The victim and the alleged perpetrator will be provided with a copy of the written report. Portions of the report may be redacted in accordance with applicable law, policy and regulation regarding confidentiality. If the complainant is not the victim or the parent and/or legal guardian of the minor student victim, then the complainant will not be provided with the written investigation report but will be provided with a written or verbal explanation of what actions were taken to investigate the allegations and whether the School Division~~

~~has taken action to resolve the matter or found no basis to take action.~~

- ~~a. Students disciplined or recommended for discipline for violations of this Regulation shall have the right to appeal the proscribed punishment as set forth in policies 5-6 and 5-21 and their implementing regulations.~~
- ~~b. Employees disciplined for sexual harassment may appeal such discipline by utilizing the applicable grievance procedures.~~
- ~~c. School Division agents, volunteers, invitees, or members of the public who are determined to have acted in violation of this Regulation may be limited in accessing School Board property, buildings, busses, communication systems or attending school sponsored events as set forth in Policy 7-17 and Regulation 7-17.1.~~
- ~~d. Nothing in this Regulation prohibits the School Division from seeking other appropriate criminal, civil or administrative remedies.~~

#### **D. Informal remedies or mediation**

The complainant or victim may utilize informal methods to remedy the complainant or mediation. Informal methods or mediation are not appropriate if the alleged conduct constitutes sexual violence or other unsafe condition for the victim. The complainant or victim cannot be compelled to utilize informal remedies or mediation and shall retain the right to discontinue informal remedies or mediation at any time.

#### **E. Retaliation and false reporting prohibited**

Retaliation against any individual who makes a complaint, participates in the investigation or resolution of a complaint is strictly prohibited and will be a violation of this Regulation. Pursuing other appropriate remedies will not be construed as retaliation. Intentional false reporting or misrepresentation of complaints or evidence regarding complaints is strictly prohibited and may result in appropriate action being taken by the

School Division. Taking appropriate action against false reporting or misrepresentation will not be considered retaliation under this Regulation.

**F. Additional contact information for complaints of sexual harassment, sexual violence, or inappropriate sexual conduct:**

The Title IX Coordinator [for student complaints](#) is the [Coordinator of Student Conduct/Services](#)~~Director of the Office of Student Leadership~~, Laskin Road Annex, 1413 Laskin Road, Virginia Beach, Virginia 23451, telephone (757) 263-2020, facsimile (757) 263-2022.

Complaints may also be directed to: U.S. Department of Education, Office for Civil Rights, at (800) 421-3481 or ocr@ed.gov.

**Related Links**

School Board [Policy 5-6](#)

School Board [Regulation 5-6.1](#)

School Board [Regulation 5-6.2](#)

School Board [Policy 5-21](#)

School Board [Regulation 5-21.1](#)

School Board [Regulation 5-21.2](#)

School Board [Regulation 5-21.3](#)

School Board [Policy 7-17](#)

School Board [Regulation 7-17.1](#)

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