

# **ARTICLE I: GENERAL ADMINISTRATION**

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**POLICY 7-1.1 SCHOOL BOARD AUTHORITY TO REGULATE STUDENTS**

Virginia and federal law give the Poquoson City School Board the power to make reasonable rules for the (1) governance of the schools, (2) management of the School Board's business, and (3) supervision of the schools, including but not limited to the proper discipline of students, including their conduct while they are on school property, attending or participating in school activities, and going to and returning from School.

**LEGAL REFERENCE:** Code of Virginia, 1950, as amended, § 22.1-78.

*Adopted: November 2002*

## **POLICY 7-1.2 EQUAL EDUCATIONAL OPPORTUNITIES/NONDISCRIMINATION**

The Poquoson City Public Schools' educational programs and services are designed to meet the varying needs of all students and do not discriminate against any individual for reasons of race, religion, color, gender, national origin, disability, sex, sexual orientation, gender identity, ethnicity, ancestry, marital or parental status, or on any other basis prohibited by law. Students may express their beliefs about religion in homework, artwork, and other written and oral assignments free from discrimination based on the religious content of their submissions. Home and classroom work shall be judged by ordinary academic standards of substance and relevance and other legitimate pedagogical concerns identified by the school. It is the policy of the School Board to maintain a working and learning environment for all of its employees and students which provides for fair and equitable treatment, including freedom from sexual harassment. The School Board encourages school division employees, patrons and students to report promptly all incidents of alleged discriminatory conduct.

It is a violation of this policy for any student or school personnel to harass a student or school personnel based on protected group status at school or any school sponsored activity. Further, it is a violation of this policy for any school personnel to tolerate harassment based on a student's or employee's protected group status at school or any school sponsored activity, by students, school personnel or third parties participating in, observing or otherwise engaged in school sponsored activities.

In furtherance of this policy, the School Board:

1. provides facilities, programs and activities that are accessible, usable and available to qualified persons with disabilities;
2. provides a free, appropriate education, including non-academic and extracurricular services to qualified persons with disabilities;
3. does not exclude qualified persons with disabilities, solely on the basis of their disabilities, from any preschool, daycare, adult education or vocational programs; and
4. does not discriminate against qualified persons with disabilities in the provision of health, welfare or social services.

### **Definitions**

"Compliance Officer" is the person designated by the School Board to receive complaints of harassment referred by the Title IX Coordinator and oversee investigation of those complaints as described below.

"Consent" is clear, unambiguous, and voluntary agreement between the participants to engage in specific sexual activity.

"Prohibited Conduct"

*"Harassment Based on Sex"<sup>1</sup>*

Harassment based on sex consists of making unwelcome sexual advances, requests for sexual favors, or by engaging in other verbal or physical conduct of a sexual nature when:

1. submission to or rejection of such conduct, either explicitly or implicitly, is used as a basis for employment or academic decisions affecting the employee or student;
2. such conduct substantially or unreasonably interferes with an individual's employment or education, or creates an intimidating, hostile, or offensive working or learning environment (i.e. the conduct is sufficiently serious to limit a student's or employee's ability to participate in or benefit from the educational program or work environment); or
3. submission to such conduct is made either explicitly or implicitly a term or condition of the individual's employment or participation in school programs.

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<sup>1</sup> The School Board also prohibits harassment based on sex that does not rise to the level of sexual harassment prohibited by Title IX, and defines both separately herein

As used elsewhere in this policy, the term “harassment” specifically includes sexual harassment unless the context implies otherwise.

*"Sexual harassment prohibited by Title IX"* means conduct on the basis of sex that satisfies one or more of the following:

- an employee of the School Board conditioning the provision of an aid, benefit, or service of the School Board on an individual's participation in unwelcome sexual conduct;
- unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the School Board's education program or activity; or
- "sexual assault" as defined in 20 U.S.C. § 1092(f)(6)(A)(v), "dating violence" as defined in 34 U.S.C. § 12291(a)(10), "domestic violence" as defined in 34 U.S.C. § 12291(a)(8), or "stalking" as defined in 34 U.S.C. § 12991(a)(3).

*"Harassment Based on Race, National Origin, Disability or Religion"*

Harassment based on race, national origin, disability or religion consists of physical or verbal conduct, which may include use of cell phones or the internet, relating to an individual's race, national origin, disability or religion when the conduct

- creates an intimidating, hostile or offensive working or educational environment;
- substantially or unreasonably interferes with an individual's work or education; or
- otherwise is sufficiently serious to limit an individual's employment opportunities or to limit a student's ability to participate in or benefit from the education program.

"Additional Prohibited Behavior"

Behavior that is not unlawful may nevertheless be unacceptable for the educational environment or the workplace. Demeaning or otherwise harmful actions are prohibited, particularly if directed at personal characteristics including socioeconomic level regardless of whether the personal characteristic is protected by law.

"Title IX" means 20 U.S.C. §§ 1681-1688 and the implementing regulations.

"Title IX Coordinator means the person(s) designated by the School Board to coordinate its efforts to comply with its responsibilities under this policy and Title IX.

The Title IX Coordinator may be contacted at: [INSERT EMAIL ADDRESS THAT WILL REACH THE TITLE IX COORDINATOR(S)]

## **Complaint Procedures**

Any student who believes that he or she has been subjected to discrimination or harassment by a student, school personnel or a third party should file a complaint of the alleged act immediately with the Title IX Coordinator or with any school personnel and the report generally should be made within fifteen (15) school days of the occurrence. The Title IX Coordinator will make an initial determination as described in further detail below. If the complaint is against the Title IX Coordinator, the complaint shall be filed with the division superintendent. If the complaint is against the division superintendent, the complaint shall be filed with the chairman of the School Board. The Title IX Coordinator shall request that the complaint be in writing. The reporting party should use the form attached to this Policy as Regulation 7-1.2(A). Refusal to put the complaint in writing shall does not preclude an investigation of the complaint. The complaint shall state in detail the basis for the complaint, the names of the persons involved and the dates of any specific incidents.

The complaint and identity of the person allegedly harassed and alleged harasser will be disclosed only to the extent necessary to fully investigate the complaint and only when such disclosure is required or

permitted by law. Additionally, a person allegedly harassed who wishes to remain anonymous shall be advised that such confidentiality may limit the School Division's ability to fully respond to the complaint.

After receiving the complaint, the Title IX Coordinator makes an initial determination whether the allegations may be sexual harassment prohibited by Title IX. If they may be, the Title IX Grievance Process below is followed. If they cannot be sexual harassment prohibited by Title IX, then the complaint is referred to the Compliance Officer who follows the procedure below.

The Title IX Coordinator also determines whether the alleged harassment may also constitute criminal conduct and ensures that law enforcement officials are notified if necessary. If the alleged harassment may also constitute child abuse, then it must be immediately reported to the Department of Social Services in accordance with Policy 7-5.7 Child Abuse and Neglect Reporting.

#### Investigation by Compliance Officer

##### 1. Generally

###### The Compliance Officer

- receives complaints of harassment referred by the Title IX Coordinator;
- conducts or oversees the investigation of any alleged harassment referred by the Title IX Coordinator;
- assesses the training needs of the school division in connection with complaints referred by the Title IX Coordinator;
- arranges necessary training; and
- ensures that any harassment investigation is conducted by an impartial investigator who is trained in the requirements of equal employment/education opportunity and has the authority to protect the alleged victim and others during the investigation.

##### 2. Compliance Officer Formal Procedure

Upon receiving a referral of a complaint of alleged prohibited harassment, the Compliance Officer, with the assistance of other appropriate school division administrators, will immediately authorize or undertake a thorough investigation of all reported incidents to determine the nature and extent of any alleged discrimination, harassment, or bullying. The investigation will be completed as soon as practicable, but not later than 14 calendar days after referral of the complaint to the Compliance Officer. Upon receiving the complaint, the Compliance Officer shall acknowledge receipt of the complaint by giving written notice that the complaint has been received to both the person complaining of harassment and the person accused of harassment. Also upon receiving the complaint, the Compliance Officer shall determine whether interim measures should be taken pending the outcome of the investigation. Such interim measures may include, but are not limited to, separating the alleged harasser and the person allegedly harassed. If the Compliance Officer determines that more than 14 school days will be required to investigate the complaint, the person allegedly harassed and the alleged harasser shall be notified of the reason for the extended investigation and of the date by which the investigation will be concluded. The School Board and the investigating administrators will observe and preserve the confidentiality of the reporting party provided it does not interfere with the investigation or with the ability to take corrective action.

The question of whether a particular action or incident is prohibited behavior requires a determination based on all the available facts in the matter and shall consider, at a minimum: (1) the surrounding circumstances; (2) the nature of the behavior; (3) past incidents or past or continuing patterns of behavior; (4) the relationship between the parties; (5) how often the conduct occurred; (6) the identity of the alleged perpetrator in relation to the alleged victim (i.e. whether the alleged perpetrator was in a position of power over the alleged victim); (7) the location of the alleged harassment; (8) the ages of the parties; and (9) the context in which the alleged incidents occurred.

A written report shall be filed with the division superintendent at the conclusion of any investigation of bullying, harassment, or discrimination regardless of the outcome of that investigation. If the complaint is against the division superintendent, the report shall be filed with the School Board. The report shall include

a determination of whether the allegations are substantiated, whether this policy was violated and recommendations for corrective action, if any. Any employee or student with knowledge of the occurrence of bullying, harassment, or discrimination should notify the compliance officer, or the division superintendent or School Board chairman if the student or employee, for any reason, does not wish to report such an occurrence to the compliance officer.

### **Action by Superintendent**

Within 5 school days of receiving the Compliance Officer's report, the division superintendent or division superintendent's designee shall issue a decision regarding whether this policy was violated. This decision must be provided in writing to the person allegedly harassed and the alleged harasser. If the division superintendent or division superintendent's designee determines that it is more likely than not that the prohibited harassment occurred, or that any administrator, teacher or other employee or student has engaged in other prohibited behavior toward another employee or student, will be subject to disciplinary action appropriate to the offense, from a warning up to and including expulsion or discharge. Whether or not the division superintendent or division superintendent's designee determines that prohibited harassment occurred, the division superintendent or division superintendent's designee may determine that school-wide or division-wide training be conducted or that the person allegedly harassed receives counseling.

### **Appeal**

If the division superintendent or division superintendent's designee determines that no prohibited harassment occurred, the employee or student who was allegedly subjected to harassment may appeal this finding to the School Board within 5 school days of receiving the decision. Notice of appeal must be filed with the division superintendent who shall forward the record to the School Board. The School Board shall make a decision within 30 calendar days of receiving the record. The School Board may ask for oral or written argument from the aggrieved party, the division superintendent and any other individual the School Board deems relevant. Written notice of the School Board's decision will be given to both the alleged harasser and the person allegedly harassed.

If the division superintendent or division superintendent's designee determines that prohibited harassment occurred and discipline is imposed, the disciplined person may appeal the disciplinary sanction in the same manner as any other such sanction would be appealed.

Employees may choose to pursue their complaints under this policy through the relevant employee grievance procedure instead of the complaint procedure in this policy.

### **Informal Procedure**

If the person allegedly harassed and the person accused of harassment agree, the principal or principal's designee or supervisor for the school of the person allegedly harassed may arrange for them to resolve the complaint informally with the help of a counselor, teacher or administrator.

If the person allegedly harassed and the person accused of harassment agree to resolve the complaint informally, they shall each be informed that they have the right to abandon the informal procedure at any time in favor of the initiation of the Compliance Officer formal procedures set forth above. The principal or principal's designee or supervisor shall notify the person allegedly harassed and the person accused of harassment in writing when the complaint has been resolved. The written notice shall state whether prohibited harassment occurred.

Sexual Harassment Prohibited by Title IX

## **Definitions**

"Actual knowledge" means notice of sexual harassment prohibited by Title IX or allegations of sexual harassment prohibited by Title IX to the Title IX Coordinator or any official of the school division who has authority to institute corrective measures or to any employee of an elementary or secondary school.

"Complainant" means an individual who is alleged to be the victim of conduct that could constitute sexual harassment prohibited by Title IX.

"Formal complaint" means a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment prohibited by Title IX against a respondent and requesting that the allegation be investigated. A formal complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail. When the Title IX Coordinator signs a formal complaint, the Title IX Coordinator is not a complainant or otherwise a party. The allegations in a formal complaint must be investigated. In response to a formal complaint, the Title IX Grievance Process below is followed.

"Program or activity" includes locations, events or circumstances over which the School Board exercises substantial control over both the respondent and the context in which the sexual harassment occurs.

"Respondent" means an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment prohibited by Title IX.

"Supportive measures" means non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed. Such measures are designed to restore or preserve equal access to the School Board's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the educational environment, or deter sexual harassment. Supportive measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work locations, leaves of absence, increased security or monitoring of parts of campus, and other similar measures. Any supportive measures provided to the complainant or respondent are maintained as confidential, to the extent that maintaining such confidentiality does not impair the ability to provide supportive measures. The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.

## **Title IX Grievance Process**

### ***Generally***

Any person may report sex discrimination prohibited by Title IX, including sexual harassment (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or sexual harassment), in person, by mail, by telephone, or by electronic mail, using the contact information listed for the Title IX Coordinator or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report. The reporting party may use the form attached to this Policy as Regulation 7-1.2(A), to make a complaint. Such a report may be made at any time, including non-business hours, by using the telephone number or electronic mail address, or by mail to the office address listed for the Title IX Coordinator.

Complainants and respondents are treated equitably by offering supportive measures to a complainant and by following this grievance process before the imposition of any disciplinary sanctions or other actions that are not supportive measures against a respondent.

The Title IX Coordinator promptly contacts the complainant to discuss the availability of supportive measures, consider the complainant's wishes with respect to supportive measures, inform the complainant of the availability of supportive measures with or without the filing of a formal complaint, and explain the process for filing a formal complaint.

Applicant for admission and employment, students, parents or legal guardians, employees, and all unions or professional organizations holding collective bargaining or professional agreements with the School Board are notified

- of the name or title, office address, electronic mail address, and telephone number of the Title IX Coordinator; and
- that the School Board does not discriminate on the basis of sex in its education program or activity and that it is required by Title IX not to discriminate in such a manner. The notification states that the requirement not to discriminate extends to admission and employment and that inquiries about the application of Title IX may be referred to the Title IX Coordinator, the Assistant Secretary for Civil Rights of the United States Department of Education, or both.

The School Board prominently displays the contact information for the Title IX Coordinator and this policy on its website and in each handbook or catalog it makes available to persons listed above who are entitled to notifications.

Nothing herein precludes a respondent from being removed from the School Board's education program or activity on an emergency basis, provided that an individualized safety and risk analysis determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal, and that the respondent is provided with notice and an opportunity to challenge the decision immediately following the removal.

Nothing herein precludes a non-student employee respondent from being placed on administrative leave during the pendency of a grievance process.

This grievance process treats complainants and respondents equitably by providing remedies to a complainant where a determination of responsibility for sexual harassment has been made against the respondent, and by following this process before the imposition of any disciplinary sanctions or other actions that are not supportive measures against a respondent. Remedies are designed to restore or preserve equal access to the School Board's education or activity.

The respondent is presumed not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process.

All relevant evidence is evaluated objectively, including both inculpatory and exculpatory evidence. Credibility determinations are not based on a person's status as a complainant, respondent, or witness.

Any Title IX Coordinator, investigator, decision-maker, or any person who facilitates an informal resolution process may not have a conflict of interest or bias for or against complainants or respondents generally or individual complainant or respondent.

Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process receives training on the definition of sexual harassment prohibited by Title IX, the scope of the School Board's education program or activity, how to conduct an investigation and grievance process including appeals, and informal resolution processes, and how to serve impartially, including by avoiding prejudgment of facts at issue, conflicts of interest, and bias. Decision-makers receive training on issues of relevance of questions and evidence, including when questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant. Investigators receiving training on issues of relevance in order to create investigative reports that fairly summarize relevant evidence.

A finding of responsibility may result in disciplinary action up to and including expulsion for students or dismissal of employees.



The standard of evidence used to determine responsibility is preponderance of the evidence.

The grievance process does not allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege unless the person holding such privilege has waived the privilege.

#### Notice of allegations

On receipt of a formal complaint, the Title IX Coordinator gives the following written notice to the parties who are known:

- notice of the grievance process, including any informal resolution process, and
- notice of the allegations of sexual harassment potentially constituting sexual harassment prohibited by Title IX, including sufficient details known at the time and with sufficient time to prepare a response before any initial interview. Sufficient details include the identities of the parties involved in the incident, if known, the conduct allegedly constituting sexual harassment prohibited by Title IX, and the date and location of the alleged incident, if known.

The written notice:

- includes a statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process;
- informs the parties that they may have an advisor of their choice, who may be, but is not required to be, an attorney, and may inspect and review evidence; and
- informs the parties of any provisions in the School Board's code of conduct or the superintendent's Standards of Student Conduct that prohibit knowingly making false statements or knowingly submitting false information during the grievance process.

If, in the course of an investigation, the investigator decides to investigate allegations about the complainant or respondent that are not included in the notice previously provided, notice of the additional allegations is provided to the parties whose identities are known.

#### ***Dismissal of formal complaints***

A formal complaint or any allegations therein must be dismissed if the conduct alleged in the complaint

- would not constitute sexual harassment prohibited by Title IX even if proved,
- did not occur in the School Board's education program or activity, or
- did not occur against a person in the United States.

Such a dismissal does not preclude action under another provision of the School Board's code of conduct or the superintendent's Standards of Student Conduct.

A formal complaint or any allegations therein may be dismissed if at any time during the investigation:

- a complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations therein;
- the respondent is no longer enrolled or employed by the School Board; or
- specific circumstances prevent the School Board from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

#### ***Investigation of formal complaint***

When investigating a formal complaint and throughout the grievance process, the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rests on the School Board and not on the parties provided that a party's records that are made or maintained by a physician, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party are not accessed, considered, disclosed or otherwise used

without the voluntary, written consent of the party's parent, or the party if the party is an eligible student, to do so for this grievance procedure.

The parties have an equal opportunity to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence.

The ability of the parties to discuss the allegations under investigation or to gather and present relevant evidence is not restricted.

The parties have the same opportunities to have others present during any grievance proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice, who may be, but is not required to be, an attorney. The choice or presence of advisor for either the complainant or respondent is not limited in any meeting or grievance proceeding.

Any party whose participation is invited or expected is provided written notice of the date, time, location, participants, and purpose of all investigative interviews or other meetings with sufficient time for the party to prepare to participate.

The investigator provides both parties an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint, including the evidence which will not be relied upon in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to conclusion of the investigation. Prior to the completion of the investigative report, the investigator must send to each party and the party's advisor, if any, the evidence subject to inspection and review in an electronic format or a hard copy, and the parties must have at least 10 days to submit a written response, which the investigator will consider prior to completion of the investigative report.

The investigator creates an investigative report that fairly summarizes relevant evidence and, at least 10 days prior to the time a determination regarding responsibility is made, sends to each party and the party's advisor, if any, the investigative report in an electronic format or a hard copy, for their review and written response.

After the investigator has sent the investigative report to the parties and before reaching a determination regarding responsibility, the decision-maker must afford each party the opportunity to submit written, relevant questions that the party wants asked of any party or witness, provide each party with the answers, and allow for additional, limited follow-up questions from each party. Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent. The decision-maker(s) must explain to the party proposing the question any decision to exclude a question as not relevant.

#### ***Determination regarding responsibility***

The decision-maker, who cannot be the same person as the Title IX Coordinator or the investigator, must issue a written determination regarding responsibility.

The written determination must include

- identification of the allegations potentially constituting sexual harassment prohibited by Title IX;
- a description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, and methods used to gather other evidence;
- findings of fact supporting the determination;

- conclusions regarding the application of the School Board’s code of conduct or the superintendent’s Standard of Student Conduct to the facts;
- a statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the School Board imposes on the respondent, and whether remedies designed to restore or preserve equal access to the School Board’s education program or activity will be provided to the complainant; and
- the procedures and permissible bases for the complainant and respondent to appeal.

The decision-maker must provide the written determination regarding responsibility to the parties simultaneously.

The determination regarding responsibility becomes final either on the date that the parties are provided with the written determination of the result of the appeal, if an appeal is filed, or, if an appeal is not filed, the date on which an appeal would no longer be considered timely.

Title IX Coordinator is responsible for effective implementation of any remedies.

### Appeals

Either party may appeal from a determination regarding responsibility or from a dismissal of a formal complaint or any allegations therein, on the following bases:

- procedural irregularity that affected the outcome of the matter;
- new evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and
- the Title IX Coordinator, investigator, or decision-maker had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.

Notification of appeal must be given in writing to the Title IX Coordinator.

As to all appeals, the Title IX Coordinator

- notifies the other party in writing when an appeal is filed and implements appeal procedures equally for both parties;
- ensures that the decision-maker for the appeal is not the same person as the decision-maker that reached the determination regarding responsibility or dismissal, the investigator, or the Title IX Coordinator; and
- ensures that the decision-maker for the appeal complies with the standards set forth in Title IX and this policy.

The appeal decision-maker

- gives both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome;
- reviews the evidence gathered by the investigator, the investigator’s report, and the decision-maker’s written decision;
- issues a written decision describing the result of the appeal and the rationale for the result; and
- provides the written decision simultaneously to both parties and the Title IX Coordinator.

### *Timelines*

The investigative report will be provided to the parties within 35 days from the date the formal complaint is filed.

A decision will be issued within 10 working days from the date the investigative report is submitted to the decision-maker.

Either party may appeal within 5 working days from the date the written determination regarding responsibility is given to the parties.

Any appeal will be resolved with 15 calendar days from the filing of the appeal.

If the parties agree to an informal resolution process, these deadlines are tolled from the time one party requests an informal resolution process until either the time the other party responds, if that party does not agree to the informal resolution process, or until either party withdraws from the informal resolution process.

Temporary delays of the grievance process or the limited extension of time frames for good cause with written notice to the complainant and the respondent of the delay or extension and the reasons for the action are permitted. Good cause may include considerations such as the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; disciplinary processes required by law or School Board policy; or the need for language assistance or accommodation of disabilities.

### **Informal Resolution Process**

At any time during the formal complaint process and prior to reaching a determination regarding responsibility, the parties may participate in an informal resolution process, such as mediation, that does not involve a full investigation and determination of responsibility. When one party requests an informal resolution process, the other party must respond to the request within 3 days. The informal resolution process must be completed within 10 days of the agreement to participate in the process.

The informal resolution process may be facilitated by a trained educational professional, consultant, or other individual selected by the Title IX Coordinator under the following conditions:

- the parties are provided a written notice disclosing the allegations, the requirements of the informal resolution process, including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations; provided, however that at any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process, resume the grievance process with respect to the formal complaint, and be informed of any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared;
- the parties, voluntarily and in writing, consent to the informal resolution process; and
- the informal resolution process cannot be used to resolve allegations that an employee sexually harassed a student.

If the matter is resolved to the satisfaction of the parties, the facilitator shall document the nature of the complaint and the resolution, have both parties sign the documentation and receive a copy, and forward it to the Title IX Coordinator. If the matter is not resolved, the formal complaint process is resumed.

Parties cannot be required to participate in an informal resolution process.

An informal resolution process is not offered unless a formal complaint is filed.

### **Recordkeeping**

The School Board will maintain for a period of seven years records of:

- each investigation of allegations of sexual harassment prohibited by Title IX including any determination regarding responsibility and any audio or audiovisual recording or transcript, if any, required under the Title IX regulations, any disciplinary sanctions imposed on the respondent, and any remedies provided to the complainant designed to restore or preserve equal access to School Board's education program or activity;
- any appeal and the result therefrom;

- any informal resolution and the result therefrom; and
- all materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process. These materials will also be made available on the School Board's website.

For each response required under 34 C.F.R. § 106.44, the School Board must create, and maintain for a period of seven years, records of any actions, including any supportive measures, taken in response to a report or formal complaint of sexual harassment prohibited by Title IX. In each instance, the School Board will document the basis for its conclusion that its response was not deliberately indifferent, and document that it has taken measures designed to restore or preserve equal access to its education program or activity. If the School Board does not provide a complainant with supportive measures, then it will document the reasons why such a response was not clearly unreasonable in light of the known circumstances.

### **Retaliation**

Any individual filing a complaint of discriminatory behavior, including harassment and bullying, is assured that he or she will be free from any retaliation from filing such a complaint. Retaliators will be subject to discipline up to and including expulsion or discharge. Retaliation against anyone reporting or thought to have reported sexual harassment, or other prohibited behaviors, is prohibited. Such retaliation is considered a serious violation of this Policy and shall be independent of whether a charge or informal complaint of discriminatory behavior is substantiated. Encouraging others to retaliate also violates this Policy.

### **Right to Alternative Complaint Procedure**

Nothing in this policy shall deny the right of any individual to pursue other avenues of recourse to address concerns relating to prohibited harassment including initiating a civil action, filing a complaint with outside agencies or seeking redress under state or federal law.

### **Prevention and Notice of Policy**

Training to prevent harassment prohibited by law or by this policy is included in employee and student orientations as well as employee in-service training.

This policy is (1) displayed in prominent areas of each division building in a location accessible to students, parents and school personnel (2) included in the student and employee handbooks; and (3) sent to parents of all students within 30 calendar days of the start of school. Further, all students, and their parents/guardians, and employees are notified annually of the names and contact information of the Compliance Officers.

### **False Charges**

False charges of harassment or discrimination are treated as a serious offense and those persons making false charges will be subject to disciplinary action as well as any civil or criminal legal proceedings.

See Superintendent's Regulation 7-1.2.

**LEGAL REFERENCE:** Title VII of the Civil Rights Act of 1964, as amended 1972, 42 U.S.C. 2000 d-z; 20 U.S.C. §§ 1681-1688; 29 U.S.C. § 794; Executive Order 11246, 1965, as amended by Executive Orders 11375 and 12086; Equal Employment Opportunity Act of 1972; Education Amendments of 1972, Title IX; 34 C.F.R. Part 106; 45 C.F.R. Part 81; Rehabilitation Act of 1973; Age Discrimination In Employment Act; Constitution of Virginia, Art. I, generally; Americans with Disabilities Act of 1990; Code of Virginia, 1950, as amended §§ 22-1-23-3, 22.1-79(6), 22.1-79(6), 22.1-306, et seq; Virginia Board of Education Regulations, Procedures for Adjusting Grievances, 2VAC 20-90-10, et seq.

*Adopted: November 2002*

*Revised: July 2008, April 2020, January 2021, September 2021*

### **POLICY 7-1.3 STUDENT INVOLVEMENT**

The Poquoson City School Board recognizes the student body as a significant part of the community and the decision-making process. Student input is important in the data collection process. On relevant issues, the School Board and the division superintendent will seek and consider students' views.

**LEGAL REFERENCE:** Code of Virginia, 1950 as amended, §§ 22.1-78, 22.1-79(2), 22.1-253.13:6, 22.1-253.13:7(D)(4); Virginia Board of Education Regulations Establishing Standards for Accrediting Public Schools in Virginia, Part III (3.1-1), 8 VAC 20-130-10, et seq.

*Adopted November 2002*

## **POLICY 7-1.4 STUDENT RECORDS**

The Poquoson City School Board shall maintain accurate and complete individual, permanent and cumulative records for every student enrolled in the school division according to applicable federal and state law. These records shall include cumulative and confidential information and shall constitute the student's official school record identified as "education records" in Title 20, § 1232(g) of the United States Code and in Chapter 14 of Title 22.1 of the Code of Virginia, 1950, as amended.

The division superintendent or his/her designee(s) shall be responsible for the collection of data, record maintenance and security, access to, and use of records, confidentiality of personally identifiable information, dissemination of information from records, and destruction of records, including the destruction of personally identifiable information regarding a student with a disability, at the request of the parents. The division superintendent or his/her designee shall also provide for notification to all division personnel of policy and procedures for management of education records and notification to parents and students of their rights regarding student records, including the right to obtain, upon request, a copy of the Poquoson City Public Schools' written policy and procedure on the management of the education records and their location. The division superintendent or his/her designee shall provide for the periodic evaluation of records by the professional personnel and the removal of data no longer educationally useful.

The school division shall provide a copy of this policy on request to a parent or eligible student.

### **Definitions**

As used in this policy, the following definitions apply:

Student – any person who attends or has attended a school in the school division.

Eligible student – a student or former student who has reached age 18, is emancipated under Virginia law, or has complied with compulsory attendance requirements as set forth in the Code of Virginia, 1950, as amended.

Parent – either natural parent of a student, a guardian, an individual acting as a parent or guardian in the absence of the student's parent or guardian, or other person in the Commonwealth having control or charge of any child of school age as defined in the Code of Virginia, 1950, as amended.

Education records – any record (recorded in any way, including, but not limited to, handwriting, print, computer media, video or audio tapes, film, microfilm, microfiche, or other medium) maintained by the school division or an agent of the school division which is directly related to a student, except:

1. a personal record kept by a staff member if it is kept in the sole possession of the maker of the record and is not accessible or revealed to another person except a temporary substitute for the maker of the record;
2. an employment record which is used only in relation to a student's employment by the school division; or
3. alumni records which contain information about a student after he is no longer in attendance in the division and which do not relate to the person as a student.

Education records include:

1. Court notice of adjudication as provided in § 16.1-305.1 of the Code of Virginia, 1950, as amended, if disciplinary action against a student is based upon an incident which formed the basis for the adjudication or conviction. Any notice of disposition shall not be retained after the student has been awarded a diploma or certificate.
2. Any disciplinary record of action taken based on notice of adjudication as specified in number 1.
3. Any disciplinary action taken against a student for violation of school rules or policies occurring on school property or at school-sponsored events and information concerning disciplinary action taken against such student for conduct that posed a significant risk to the safety or well-being of that student, other students, or other members of the school community.



If disciplinary action is taken by the school division in regard to the incident upon which the adjudication or conviction was based, notice shall be provided to the parent or guardian in accordance with state law. With the consent of the parent or guardian, or in compliance with a court order, the school division must also notify the court of the disciplinary action. If the school division does not take disciplinary action, every notice of adjudication or conviction received by the division superintendent, and information contained in the notice, shall be maintained by the division superintendent, and by any others to whom he/she disseminates it as permitted by law, separately from all other records concerning the student.

### **Dissemination of Information about Court Proceedings**

The division superintendent or his/her designee shall disseminate the notice or information about an adjudication of delinquency or conviction of an offense listed in § 16.1-260(g) contained in a notice received pursuant to § 16.1-305.1 of the Code of Virginia, 1950, as amended, to school personnel responsible for the management of student records and to other relevant school personnel, including, but not limited to, the principal of the school in which the student is enrolled. The principal shall further disseminate such information to licensed instructional personnel and other school personnel who:

1. provide direct educational and support services to the student; and
2. have a legitimate educational interest in such information.

The division superintendent shall not disclose information contained in or derived from a notice of petition received pursuant to § 16.1-260 except as follows:

1. If the juvenile is not enrolled as a student in a public school in the division (to which the notice was given), the division superintendent shall promptly notify the intake officer of the juvenile and domestic relations district court in which the petition was filed and may forward the notice of petition to the division superintendent of the division in which the juvenile is enrolled, if known.
2. Prior to receipt of the notice of disposition, the division superintendent may disclose the fact of the filing of the petition and the nature of the offense to the principal of the school in which the student is enrolled if the division superintendent believes that disclosure to school personnel is necessary to ensure the physical safety of the student, other students or school personnel within the division.
3. After the student has been taken into custody, whether or not the student has been released, the principal may further disseminate the information only to those students and school personnel having direct contact with the student and need of the information to ensure physical safety, appropriate educational placement or other educational services.

### **Annual Notification**

Parents will be notified of their rights under the Federal Educational Rights and Privacy Act (FERPA) annually by publication in the Code of Student Conduct booklet published/distributed at the beginning of each academic year.

The school division shall notify, at least annually, the parents of students in attendance (including those parents identified as having a primary or home language other than English) and eligible students in attendance by such means as are reasonably likely to inform them of their rights as follows:

1. The right to inspect and review any educational records relating to the student, which are on file within the school division.
2. The right to receive any of the student's record information within 14 days after filing your request.
3. The right to receive a response from the Poquoson City Schools to reasonable requests for explanations and interpretations of your child's records.
4. The right to request that the Poquoson City Schools provide copies of records. A fee for copying records may be charged, provided that the charge does not exceed the cost of reproduction. Such a

- fee shall not effectively prevent you from exercising your right to inspect and review your child's records. Fees are charged for high school transcripts and multiple copies of records.
5. The right to have a representative review your child's records. Poquoson City Schools will assume that both of the student's parents have authority to inspect and review records relating to his/her child unless the division has been advised otherwise.
  6. The right to a list of the types and locations of education records collected, maintained or used by Poquoson City Schools.
  7. The right to a copy of your child's Individualized Education Plan (IEP) at no cost.
  8. The right to request that the Poquoson City Schools amend information found in education records when you believe that the information is inaccurate or misleading or violates privacy or other rights. Parents or eligible students should write to the school principal, clearly identifying the part of the record they want changed, and specify why it is inaccurate or misleading. If the division decides not to amend the record, Poquoson City Schools will notify you of the decision and advise you of your right to a hearing.
  9. The right to place in your student's record a statement commenting on the information you feel is not accurate, is misleading, or otherwise in violation of privacy or other rights of your child.
  10. The right to be informed that directory information may be made available for publicity or other purposes without prior parental consent. This information will include the name and address of the student. For publicity purposes as related to school activities, the directory information also will include dates of attendance, participation in officially recognized activities and sports, height and weight (if member of athletic team), awards and honors received, photograph, and other similar information. To refuse release of directory information, you must submit a written request to the school office at the beginning of each school year.
  11. The right to review, upon request, a copy of Poquoson City Schools' written policy and procedures on the management of the scholastic records and location of the same.
  12. The right to file a complaint with the U.S. Department of Education concerning an alleged failure by Poquoson City Schools to comply with the requirements of FERPA.
  13. The right to be informed that education records may be disclosed without the consent of the parent or eligible student to officials of another school, school system, or institution of postsecondary education where the student seeks or intends to enroll, or where the student is already enrolled if the disclosure is for purposes related to the student's enrollment or transfer. Parents and eligible students have a right to inspect and review the record of such disclosures.

### **Procedure to Inspect Education Records**

Parents of students or eligible students may inspect and review the education records relating to their children without unnecessary delay and before any meeting regarding an IEP or hearing involving a student with a disability. Further, parents shall have the right to a response from the school division to reasonable requests for explanations and interpretations of the education record. Neither parent, regardless of whether such parent has custody, shall be denied access to educational records of that parent's minor child unless ordered by the court for good cause shown.

The principal (or appropriate school official) will make the needed arrangements for access as promptly as possible and notify the parents or eligible students of the time and place where the records may be inspected. Access must be given no later than 14 days from the receipt of the request.

When a record contains information about students other than a parent's child or the eligible student, the parent or eligible student may not inspect and review the portion of the record which pertains to other students.

When disciplinary action is taken by the school division in regard to an incident upon which an adjudication of delinquency or a conviction of acts specified in § 16.1-305.1 of the Code of Virginia, 1950, as amended, has been made, the parent or guardian must be notified of the action, the reasons therefor and his right to review and to request amendment of the student's education records. Every notice of adjudication or conviction received by the division superintendent and information in the notice which is

not a disciplinary record, shall be maintained by the division superintendent and other school personnel separately from all other records concerning such student unless the school division takes disciplinary action based on an incident which was the basis for the adjudication or conviction.

### **Refusal To Provide Copies**

Although Poquoson City Public Schools cannot deny parents access to their children's education records, the school division will not provide a parent or eligible student a copy of the student's education record unless failure to do so would effectively prevent the parent or eligible student the right to inspect and review the records.

### **Fees for Copies of Records**

The fee for copies will be .10 per page. The actual cost of copying time and postage will be charged. The school division shall not charge for search and retrieval of the records. The school division shall not charge a fee for copying an Individualized Education Plan (IEP) or for a copy of the verbatim record of a hearing conducted in accordance with the State Board of Education's Regulations Governing Special Education Programs for Children with Disabilities in Virginia.

### **Types, Locations, and Custodians of Education Records**

Poquoson City Public Schools shall provide parents, on request, a list of the types and locations of education records collected, maintained, or used by the school division. Persons interested in obtaining information about the types of records maintained by Poquoson City Public Schools, their location and custodian, may contact the school division's record manager.

### **Disclosure of Education Records**

When parental consent is required in order to release a student's records and the parent refuses to give such consent, the division shall use informal means to secure the consent. If the parent continues to refuse to consent, the school division shall provide written notification to the person/agency requesting the information that parental consent is required and has been refused. If the school division wishes to disclose the information and has been unable to secure the necessary consent through informal means, the school division may use more formal measures, as appropriate, to effect release of information. Poquoson City Public Schools shall disclose information from a student's education records only with the written consent of the parent or eligible student, except:

1. To school officials who have a legitimate educational interest in the records. A school official is:
  - a. a person employed by the School Board as an administrator, supervisor, instructor, or support staff member;
  - b. a person appointed or elected to the School Board;
  - c. a person employed by or under contract with the School Board to perform a special task, such as an attorney, auditor, medical consultant, or therapist; and
  - d. a person who is a teacher or school official, including teachers and school officials in other schools, who have legitimate educational interests in the student. A school official has a "legitimate educational interest" if the official is:
    - i. performing a task that is specified in his position description or by a contract agreement;
    - ii. performing a task related to a student's education;
    - iii. performing a task related to the discipline of a student; and/or
    - iv. providing a service or benefit relating to the student or student's family, such as health care, counseling, job placement, or financial aid.
2. To officials of another school, upon request, in which a student seeks or intends to enroll. Poquoson City Public Schools shall provide written notice of the transfer including the identity of the requester to the parent, guardian or other person having control or charge of the student or to a student who is 18 years of age or older within five days of the date on which the record was

- transferred. This notice requirement applies to the transfer of records to education programs in jails and detention centers.
3. To certain officials of the U.S. Department of Education, the Comptroller General, and state and local educational authorities, in connection with certain state or federally supported education programs.
  4. In connection with a student's request for or receipt of financial aid as necessary to determine the eligibility, amount, or conditions of the financial aid, or to enforce the terms and conditions of the aid.
  5. To state and local officials or authorities to whom such information is specifically allowed to be reported or disclosed pursuant to state law adopted:
    - a. Prior to November 19, 1974, if the allowed disclosure or reporting concerns the juvenile justice system and its ability to effectively serve the student whose records are released; or
    - b. After November 19, 1974, if the allowed disclosure or reporting concerns the juvenile justice system and its ability to effectively serve, prior to adjudication, the student whose records are released, and the officials to whom the records are disclosed certify in writing to the school division that the information will not be disclosed to any other party without the prior written consent of the parent or eligible student, except as provided by state law.
  6. To organizations conducting certain studies for or on behalf of the school division.
  7. To accrediting organizations to carry out their functions.
  8. To parents of an eligible student who claim the student as a dependent for income tax purposes.
  9. To the entities or persons designated in judicial orders or subpoenas as specified in FERPA.
  10. To appropriate parties in a health or safety emergency.
  11. Directory information so designated by the school division.

#### **Release to Juvenile Justice Authorities**

The principal or his/her designee may disclose identifying information from a pupil's scholastic record for the purpose of furthering the ability of the juvenile justice system to effectively serve the pupil prior to adjudication. The principal or his/her designee may disclose identifying information from a pupil's scholastic record to the following agencies or individuals:

1. State or local law-enforcement or correctional personnel, including a law-enforcement officer, probation officer, parole officer or administrator, or a member of a parole board, seeking information in the course of his/her duties.
2. An officer or employee of a county or city agency responsible for protective services to children, as to a pupil referred to that agency as a minor requiring investigation or supervision by that agency.
3. Attorneys for the Commonwealth, court service units, juvenile detention centers or group homes, mental and medical health agencies, state and local children and family service agencies, and the Department of Juvenile Justice and to the staff of such agencies.

Prior to disclosure of any such scholastic records, the persons to whom the records are to be disclosed shall certify in writing to the principal or his designee that the information will not be disclosed to any other party, except as provided under state law, without the prior written consent of the parent of the pupil or by such pupil if the pupil is eighteen years of age or older.

#### **Release to Federal Government Agencies**

Except as required by federal law or regulation, no member or employee of the Poquoson City School Board shall transmit personally identifiable information, as that term is defined in the Family Educational Rights and Privacy Act (20 U.S.C. § 1232g) and related regulations, from a student's record to a federal government agency or an authorized representative of such agency.

#### **Record of Requests for Disclosure**

Poquoson City Public Schools shall maintain a record kept with the education records of each student, indicating all individuals, agencies or organizations which request or obtain access to a student's education records, except those who receive records with consent. The record will indicate the legitimate interest the party had in obtaining the information. The record of access will be available only to parents, to the school official and his/her assistant(s) who are responsible for the custody of such records, and to persons or organizations which audit the operation of the system.

The requirements related to records of requests for disclosure stated above do not apply to requests made pursuant to an ex parte order issued by a court at the request of the United States Attorney General (or any federal officer or employee, in a position not lower than an Assistant Attorney General, designated by the Attorney General) seeking to collect education records relevant to an authorized investigation or prosecution of international terrorism as defined in 18 U.S.C. § 2331 or other acts listed in 18 U.S.C. § 2332b(g)(5)(B).

Personal information will only be transferred to a third party on the condition that such party will not permit any other party to have access to such information without the written consent of the parents of the student. If a third party permits access to information, or fails to destroy information, the school division will not permit access to information from educational records to that third party for a period of at least five years.

### **Directory Information**

Poquoson City Public Schools shall notify parents and eligible students at the beginning of each school year what information, if any, the school division has designated as directory information, the right to refuse to let the school division designate any or all of such information as directory information and the period of time to refuse, in writing, the directory information designation, in accordance with FERPA.

Directory information may include the name, gender, address, telephone listing, date and place of birth, the student's major field of study, participation in officially recognized activities and sports, the weight and height of members of athletic teams, dates of attendance, degrees or awards received and photographs.

In addition, two federal laws (the No Child Left Behind Act of 2001 and the National Defense Authorization Act for Fiscal Year 2002) require Poquoson City Public Schools, because they receive assistance under the Elementary and Secondary Education Act of 1965, to provide military recruiters, upon request, student names, addresses, and telephone numbers, subject to a parent's request not to disclose such information without written consent.

To refuse release of directory information, submit a **written request** to the office of the school the child attends at the beginning of each school year. Further, notwithstanding the definition of directory information above, the custodian of a scholastic record shall not release the address, phone number, or email address of a student in response to a request made pursuant to the Virginia Freedom of Information Act (§ 2.2-3700 et seq.) unless the parent or eligible student has affirmatively consented in writing to such disclosure. For any student who is (i) 18 years of age or older, (ii) under the age of 18 and emancipated, or (iii) attending an institution of higher education, written consent of the student shall be required. For any other student, written consent of the parent or legal guardian of such student shall be required. Additionally, except as required by state or federal law, no school shall disclose the address, telephone number, or email address of a student pursuant to 34 C.F.R. § 99.31(a)(11) unless (a) the disclosure is to students enrolled in the school or to school board employees for educational purposes or school business and the parent or eligible student has not opted out of such disclosure in accordance with this subsection and school board policy or (b) the parent or eligible student has affirmatively consented in writing to such disclosure.

### **Notification of Disclosure in Violation of FERPA**

If the School Board reasonably believes that electronic records containing personally identifiable information have been disclosed in violation of FERPA or other federal or state law applicable to such information, it shall notify, as soon as practicable, the parent of any student affected by such disclosure,

except as otherwise provided in § 32.1-127.1:05 or 18.2-186.6 of the Code of Virginia. Such notification shall include the (i) date, estimated date, or range of the disclosure; (ii) type of information that was or is reasonably believed to have been disclosed; and (iii) remedial measures taken or planned in response to the disclosure.

### **Correction of Education Records**

Parents or eligible students shall be notified of their right to challenge the content of student records and to ask to have records corrected (including expungement) that they believe are inaccurate, misleading, or in violation of their privacy rights. Following are the procedures for the correction of records:

1. Parents or the eligible student must request in writing that Poquoson City Public Schools amend a record. In so doing, they should identify the part of the record they want changed and specify why they believe it is inaccurate, misleading or in violation of the student's privacy or other rights.
2. School division officials shall decide whether to amend the record in accordance with the request within a reasonable period of time. If they decide not to comply, the school division shall notify the parents or eligible student of the decision and advise them of their right to a hearing to challenge the information believed to be inaccurate, misleading, or in violation of the student's rights.
3. Upon written request, the school division shall arrange for a hearing and notify the parents or eligible student, reasonably in advance, of the date, place, and time of the hearing. The hearing shall be held within a reasonable period of time after the request.
4. At any such hearing, the parent may be accompanied and represented by one or more individuals/attorneys.
5. A hearing officer who is a disinterested party shall conduct the hearing; the hearing officer may be an official of the school division. The parents or eligible student shall be afforded a full and fair opportunity to present evidence relevant to the issues raised in the original request to amend the student's education records in accordance with FERPA.
6. The school division shall prepare a written decision which will include a summary of the evidence presented and the reasons for the decision.
7. If the school division decides that the challenged information is not inaccurate, is misleading, or in violation of the student's right of privacy, it will notify the parents or eligible student that they have a right to place in the student's official record a statement commenting on the challenged information and/or a statement setting forth reasons for disagreeing with the decision. The statement will be maintained as part of the student's education record as long as the contested portion is maintained.
8. If the school division decides that the information is inaccurate, misleading, or in violation of the student's right of privacy, it shall amend (including expungement) the record and notify the parents or eligible student, in writing, that the record has been amended.
9. Poquoson City Public Schools shall notify the parent and eligible student of their right to file with the FERPA Office a complaint concerning an alleged failure by the school division to comply with federal law.

### **Confidentiality of HIV and Drug And Alcohol Treatment Records**

The school division shall comply with the confidentiality requirements of § 32.1-36.1 of the Code of Virginia, 1950, as amended, providing for the confidentiality of records related to any test for human immunodeficiency virus (HIV). In addition, the school division shall maintain confidentiality of drug and alcohol treatment records as required by federal and state law.

### **Electronic Records and Signatures**

Poquoson City Public Schools may accept electronic records and electronic signatures from any parent, guardian, or other person having control or charge of a child enrolled in the Poquoson City Public Schools, in accordance with applicable law. The division superintendent shall promulgate regulations to accept electronic records and electronic signatures that meet the requirements of Virginia Code Sections 22.1-79.3(F) and 59.1-479, et seq.

## **Report of Missing Children**

The School Board shall receive from local law enforcement, as required by applicable law, reports of disappearances of any children living within the school division. Upon notification by a local law enforcement agency of a child's disappearance, the principal of any school in which the child was enrolled at the time of the disappearance shall indicate, by mark, in the child's cumulative record that the child has been reported missing. Upon notification by law enforcement that the child is located, the principal shall remove the mark from the record. For purposes of this Policy, a "mark" shall mean an electronic or other indicator that:

1. is readily apparent on the student's record; and
2. will immediately alert any school personnel that the record is that of a missing child.

Upon receiving a request from any school or person for copies of the cumulative records and birth certificate of any child who has been reported by a local law-enforcement agency to be missing, the school being requested to transfer the records shall immediately notify the law-enforcement agency that provided the report to the school of the child's disappearance of the location of the school or person requesting the cumulative records and birth certificate of the child, without alerting the requestor of such report.

See Superintendent's Regulation 7-1.4 A, B, and C.

**LEGAL REFERENCE:** Code of Virginia, 1950, as amended, §§ 16.1-301, 16.1-305.1, 16.1 305.2, 22-1.23.3, 22.1-79.3; 22.1-287 through 22.1-289, 32.1-36.1; 59.1-479 et seq; Virginia Board of Education Special Education Program Standards , 8 VAC 20-570-10, et seq.; Regulations Governing Management of the Student's Scholastic Record, 8 VAC 20-150-10; Family Educational Rights and Privacy Act of 1974 (FERPA), P.L. 93-380, 20 U.S.C. § 1232(g) (1979); 34 C.F.R. Part 99; No Child Left Behind Act of 2001, P.L. 107-110; the National Defense Authorization Act for Fiscal Year 2002, P.L. 107-107; Individuals With Disabilities Education Act of 1990, P.L. 94-142, 20 U.S.C. § 1401, et seq. (1982), 34 C.F.R., § 300, et seq.; Education Division General Administrative Regulations (EDGAR) 34 C.F.R. § 75.734; 42 United States Code, § 290dd.

*Adopted: November 2002*

*Revised: July 2003, August 2006, July 2007, June 2011, August 2014, June 2015, August 2018, August 2019, September 2021*

## **POLICY 7-1.5 ADMINISTRATION OF SURVEYS AND QUESTIONNAIRES**

### **Inspection of Instructional Materials by Parents or Guardians**

Federal law requires that all instructional materials, including teacher's manuals, films, tapes, or other supplementary material, which will be used in connection with any survey, analysis, or evaluation as part of any applicable federal program be made available for inspection by the parents or guardians of students. The Poquoson City School Board shall make any and all such instructional materials available for inspection by parents or guardians as is described in this Policy.

### **Procedure for Requesting Opportunity to Inspect Instructional Materials**

Parents or guardians of Poquoson City Public Schools students who want to inspect any such instructional materials should submit to the principal or his designee of the school that their student attends, a written request to inspect. The written request should describe in as much detail as is possible the instructional materials that the parents or guardians wish to inspect. Parents may make their request to inspect instructional materials verbally; however, the School Board recommends that requests to inspect instructional materials be submitted in writing, where possible, to avoid any misunderstanding regarding the requests. Upon receiving requests to review instructional materials, the principal or his designee shall consult with the requesting parents and schedule a mutually agreeable time for the parents to review the requested materials at the school. Such review shall be scheduled within a reasonable amount of time following the receipt by the principal or his designee of the request, but affording the school administration sufficient time to gather the requested materials.

### **Participation in Surveys and Evaluations**

No Poquoson City Public Schools student shall be required, as part of any federally funded program, to submit to a survey, analysis, or evaluation that reveals information concerning any of the following topics:

1. political affiliations or beliefs of the student or the student's parent;
2. mental or psychological problems of the student or the student's family;
3. sex behavior or attitudes;
4. illegal, anti-social, self-incriminating, or demeaning behavior;
5. critical appraisals of other individuals with whom respondents/students have close family relationships;
6. legally recognized privileged or analogous relationships, such as those of lawyers, physicians, and ministers;
7. religious practices, affiliations, or beliefs of the student or student's parent; or
8. income (other than that required by law to determine eligibility for participation in a program or for receiving financial assistance under such program) without the prior written consent of the student (if the student is an adult or emancipated minor), or in the case of an unemancipated minor, without the prior written consent of the student's parent.

### **Additional Rights and Protections**

In addition to those rights listed above, Poquoson City Public Schools students and their parents enjoy the following rights and protections:

1. Right to Inspect Surveys: Parents of students have the right to inspect, after making a request to do so to the appropriate school officials, any survey created by a third party before the survey is administered or distributed by any Poquoson City Public School to their students. Parents requesting the opportunity to inspect any such survey shall be granted access to the survey instrument within a reasonable period of time following the parents' request. Parents should follow the procedures described above to request an inspection of surveys.
2. Arrangements to Protect Student Privacy: In the event that any Poquoson City Public School administers or distributes to students a survey containing one or more of the topics listed above,



- the school shall take the following precautions to protect the privacy of any student completing any survey:
- a. Where appropriate, such surveys shall be administered/distributed anonymously, so that students completing the surveys cannot be identified by their responses.
  - b. School officials administering surveys subject to this Policy shall inform students before administering the survey that the students are not required to complete the survey. School officials shall also inform students that if they choose to complete the survey, their responses shall be reviewed only by persons who are employed by the Poquoson City Public Schools and/or by the developer/provider of the survey instrument.
  - c. During the completion of surveys by students, teachers, guidance counselors and/or other school administrators who are administering the surveys shall not review surveys as they are being completed by students. Preferably, the school officials will pass out the surveys and collect them from the front of the room in which they are being completed, so that no school official can identify any students' responses.
  - d. School officials, including teachers, guidance counselors, and/or school administrators, shall collect completed surveys separately from any and all other materials collected from students. The completed surveys shall be maintained in separate files related solely to the administration/distribution of the subject survey, and shall not be maintained in students' individual student records.
3. Inspection of Instructional Materials: In addition to the right to inspect instructional materials described above in this Policy, parents of Poquoson City Public Schools students, after making a request to the appropriate school officials, may inspect any instructional material used as part of the educational curriculum for students. Parents requesting the opportunity to inspect any such instructional materials shall be granted access to the materials within a reasonable period of time following the parents' request. Parents should follow the procedure described above to request an inspection of instructional materials.
4. Physical Examinations and Screenings: The Poquoson City Public Schools administer physical examinations and screenings required by applicable Virginia law and the Individuals with Disabilities Education Act. In addition, the Poquoson City Public Schools from time-to-time administer physical examinations or screenings not required by law but to assist families (e.g., heights and weights for students at ages not otherwise required by law). In such instances, parents are notified and provided the opportunity to opt out of such examinations or screenings. The Poquoson School Board shall involve parents in any revision to this or other policies requiring the administration of physical examinations or screenings of students other than those required by applicable Virginia law or the Individuals with Disabilities Education Act.
5. Commercial Use of Information: The Poquoson City Public Schools do not administer to students any questionnaires or surveys that result in the sale for commercial purposes of personal information regarding individual students or provide personal information to for such purposes. This subsection does not apply to the collection, disclosure, or use of personal information collected from students for the exclusive purpose of developing, evaluating, or providing educational products or services for, or to, students or educational institutions, such as the following:
- a. college or other postsecondary education recruitment, or military recruitment;
  - b. book clubs, magazines, and programs providing access to low-cost literary products;
  - c. curriculum and instructional materials used by elementary schools and secondary schools;
  - d. tests and assessments used by elementary schools and secondary schools to provide cognitive, evaluative, diagnostic, clinical, aptitude, or achievement information about students (or to generate other statistically useful data for the purpose of securing such tests and assessments) and the subsequent analysis and public release of the aggregate data from such tests and assessments;
  - e. the sale by students of products and services to raise funds for school-related or education-related activities; and
  - f. student recognition programs.
6. In any case in which a questionnaire or survey requesting that students provide sexual information, mental health information, medical information, information on student health risk behaviors

pursuant to § 32.1-73.8, other information on controlled substance abuse, or any other information that the School Board deems to be sensitive in nature is to be administered, the School Board shall notify the parent concerning the administration of such questionnaire or survey in writing not less than 30 days prior to its administration. The notice shall inform the parent regarding the nature and types of questions included in the questionnaire or survey, the purposes and age-appropriateness of the questionnaire or survey, how information collected by the questionnaire or survey will be used, who will have access to such information, the steps that will be taken to protect student privacy, and whether and how any findings or results will be disclosed. In any case in which a questionnaire or survey is required by state law or is requested by a state agency, the relevant state agency shall provide the School Board with all information required to be included in the notice to parents. The parent shall have the right to review the questionnaire or survey in a manner mutually agreed upon by the school and the parent and exempt his child from participating in the questionnaire or survey, as provided elsewhere in this Policy. However, no questionnaire or survey requesting sexual information of a student shall be administered to any student in kindergarten through grade six. Unless required by federal or state law or regulation, school personnel administering any such questionnaire or survey shall not disclose personally identifiable information.

### **Opt-Out Provisions**

Parents (or emancipated students for themselves) may opt their students out of participating in any of the following:

1. activities involving the collection, disclosure, or use of personal information collected from students for the purpose of marketing or for selling that information (or otherwise providing that information to others for that purpose), as discussed above;
2. the administration of any survey containing one or more of the items listed above;
3. any nonemergency, invasive physical examination or screening as described above, that is: a. required as a condition for attendance at any Poquoson City Public School; administered by any Poquoson City Public School and scheduled by the school in advance; and NOT necessary to protect the immediate health and safety of the student or of other students.

### **Parental Notification**

#### Notification of Policies:

The Poquoson City School Board shall provide notice of this Policy directly to parents of students annually at the beginning of each school year and within a reasonable period of time after any substantive change in this Policy.

#### Notification of Specific Events:

The Poquoson City School Board shall notify directly the parents of students, at least annually at the beginning of each academic year, regarding the specific or approximate dates during the school year when the following activities are scheduled, or expected to be scheduled:

1. activities involving the collection, disclosure, or use of personal information collected from students for the purpose of marketing or for selling that information (or otherwise providing that information to others for that purpose), as is discussed above;
2. the administration of any survey containing one or more of the items listed above;
3. any nonemergency, invasive physical examination or screening as is described above, that is (a) required as a condition for attendance at any Poquoson City Public School, (b) administered by any Poquoson City Public School and scheduled by the School in advance, AND (c) NOT necessary to protect the immediate health and safety of the student or other students.

## **Definitions**

As used in this Policy, the following terms have the meanings provided below.

“Instructional material” means instructional content that is provided to a student, regardless of its format, including printed or representational materials, audio-visual materials, and materials in electronic or digital formats (such as materials accessible through the Internet). The term does not include academic tests or academic assessments.

“Invasive physical examination” means any medical examination that involves the exposure of private body parts, or any act during such examination that includes incision, insertion, or injection into the body, but does not include a hearing, vision or scoliosis screening.

“Parent” includes a legal guardian or other person standing in loco parentis (such as a grandparent or stepparent with whom the child lives, or a person who is legally responsible for the welfare of the child).

“Personal information” means individually identifiable information, including (1) a student’s or parent’s first and last name; (2) a home or other physical address (including street name and the name of the city or town); (3) a telephone number; or (4) a Social Security identification number.

“Survey”: the term includes an evaluation.

## **Policy Adoption and Revision**

The Poquoson City School Board adopted this Policy following consultation with parents of Poquoson City Public Schools students. Any amendment or revision to this Policy shall be made by the School Board only after consultation with parents of Poquoson City Public Schools students.

**LEGAL REFERENCE:** Code of Virginia, 1950, as amended, §§ 22.1-79.3; 20 U.S.C. § 1232h; 34 C.F.R. Part 98.

*Adopted: November 2002*

*Revised: July 2003, August 2006, July 2015*