

FAUQUIER COUNTY PUBLIC SCHOOLS	Policy: 5-1.7
	Adopted: 03/12/12
	Revised: 01/11/21, 11/15/21
SEXUAL ABUSE AND HARASSMENT/HARASSMENT BASED ON RACE, NATIONAL ORIGIN, DISABILITY AND RELIGION	

1. Policy Statement

- 1.1. The Fauquier County School Board is committed to maintaining a learning/working environment free from sexual abuse and harassment and harassment based on race, national origin, disability or religion. Therefore, the School Board prohibits harassment against students, employees, or others on the basis of, sexual orientation, gender, gender identity, race, color, national origin, disability, religion ancestry, age, marital status, pregnancy, childbirth or related medical conditions, status as a veteran, genetic information or any other characteristic protected by law or based on a belief that such characteristic exists, hereinafter referred to as protected group status, or any other basis prohibited by law at school or any school sponsored activity. The School Board encourages school division employees, patrons and students to report promptly all incidents of alleged discriminatory conduct.

2. Policy Violation

- 2.1. It shall be a violation of this policy for any student or school personnel to harass a student or school personnel based on a protected group status at school or any school sponsored activity.
- 2.2. It shall be a violation of this policy for any school personnel to tolerate sexual harassment or harassment based on a student's or employee's race, national origin, disability or religion by students, school personnel or third parties participating in, observing or otherwise engaged in school sponsored activities.

3. Procedures

- 3.1. The School Division shall:
 - 3.1.1. Promptly investigate all complaints, written or verbal, of sexual harassment and harassment based on race, national origin, disability or religion;
 - 3.1.2. Promptly take appropriate action to stop any harassment; and
 - 3.1.3. Take appropriate action against any students or school personnel who violate this policy and; _
 - 3.1.4. Take any other action reasonably calculated to end and prevent further harassment of school personnel or students.

4. Definitions

- 4.1. **"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.¹
- 4.2. **"Consent"** is clear, unambiguous, and voluntary agreement between the participants to engage in specific sexual activity.
- 4.3. **"School Personnel"** means: School Board members, school employees, agents, volunteers, contractors or other persons subject to the supervision and control of the school division.
- 4.4. **"Prohibited Conduct"**
 - 4.4.1. **"Sexual Harassment"** consists of unwelcome sexual advances, requests for sexual favors, sexually motivated physical conduct or other verbal or physical conduct or communication of a sexual nature when:

¹ Can have more than one Compliance Officer.

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- 4.4.1.1. Submission to that conduct or communication is made a term or condition, either explicitly or implicitly of obtaining or retaining employment or education; or
- 4.4.1.2. Submission to or rejection of the conduct or communication by an individual is used as a factor in decisions affecting that individual’s employment or education; or
- 4.4.1.3. That conduct or communication substantially or unreasonably interferes with an individual’s employment or education, or creates an intimidating, hostile or offensive employment or educational environment (i.e. the conduct is sufficiently serious to limit a student’s or employee’s ability to participate in, benefit from the educational program, or work environment).
- 4.4.2. Examples of conduct which may constitute sexual harassment if it meets the immediately preceding definition include:
 - 4.4.2.1. Unwelcome sexual physical contact;
 - 4.4.2.2. Unwelcome ongoing or repeated sexual flirtation or propositions or remarks;
 - 4.4.2.3. Sexual slurs, leering, epithets, threats, verbal abuse, derogatory comments or sexually degrading descriptions;
 - 4.4.2.4. Graphic comments about an individual’s body;
 - 4.4.2.5. Sexual jokes, notes, stories, drawings, gestures or pictures;
 - 4.4.2.6. Spreading sexual rumors;
 - 4.4.2.7. Touching an individual’s body or clothes in a sexual way;
 - 4.4.2.8. Displaying sexual objects, pictures, cartoons or posters; and
 - 4.4.2.9. Impeding or blocking movement in a sexually intimidating manner.
- 4.4.3. *“Sexual Harassment Prohibited by Title IX”* means conduct on the basis of sex that satisfies one or more of the following:
 - 4.4.3.1. 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;
 - 4.4.3.2. unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the School Board’s education program or activity; or
 - 4.4.3.3. “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).
- 4.5. ***“Harassment Based on Race, National Origin, Disability or Religion”***
 - 4.5.1. Harassment based on race, national origin, disability or religion consists of physical or verbal conduct relating to an individual’s race, national origin, disability or religion when the conduct:

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- 4.5.1.1. Has the purpose or effect of creating an intimidating, hostile or offensive working or educational environment;
- 4.5.1.2. Has the purpose or effect of substantially or unreasonably interfering with an individual’s work or education; or
- 4.5.1.3. Otherwise is sufficiently serious to limit an individual’s employment opportunities or to limit student’s ability to participate in or benefit from the education program.
- 4.5.2. Examples of conduct which may constitute harassment based on race, national origin, disability or religion if it meets the immediately preceding definition include:
 - 4.5.2.1. Graffiti containing racially offensive language;
 - 4.5.2.2. Name calling, jokes or rumors;
 - 4.5.2.3. Physical acts of aggression against a person or his property because of that person’s race, national origin, disability or religion;
 - 4.5.2.4. Hostile acts which are based on another’s race, national origin, religion or disability; and
 - 4.5.2.5. Written or graphic material which is posted or circulated and which intimidates or threatens individuals based on their race, national origin, disability or religion.
- 4.6. **“ Additional Prohibited Conduct”**
 - 4.6.1. 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.
- 4.7. **“ Title IX”** means 20 U.S.C. §§ 1681-1688 and the implementing regulations.
- 4.8. **“ Title IX Coordinator”** means the person 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 TitleIXCoordinator@FCPS1.ORG.

5. Complaint Procedures

5.1. Formal Procedure

5.1.1. File Report

- 5.1.1.1. Any student or school personnel who believes he or she has been the victim of sexual harassment or harassment based on race, national origin, religion or disability by a student, school personnel or a third party should report the alleged harassment as soon as possible to the Title IX Coordinator or to any school personnel. The alleged harassment should be reported as soon as possible, and the report generally should be made within fifteen (15) school days of the occurrence. Further, any student who has knowledge of conduct which may constitute prohibited harassment should report such conduct to the Title IX Coordinator or to any school personnel. Any school personnel who have notice that a student or other school personnel may have been a victim of prohibited

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harassment shall immediately report the alleged harassment to the Title IX Coordinator. Any complaint that involves the Title IX Coordinator should be reported to the superintendent.

- 5.1.1.2. The reporting party should use the form, Report of Harassment, attached as Form 5-1.7 F1, to make complaints of harassment. However, oral reports and other written reports shall also be accepted.
- 5.1.1.3. The complaint and the 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.
- 5.1.1.4. 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.
- 5.1.1.5. 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.
- 5.1.1.6. 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 7-5.5 Child Abuse and Neglect Reporting.

5.1.2. Investigation by Compliance Officer

5.1.2.1. The Compliance Officer:

- 5.1.2.1.1. Receives complaints of discrimination or harassment referred by the Title IX Coordinator;
- 5.1.2.1.2. Conducts or oversees the investigation of any alleged discrimination or harassment referred by the Title IX Coordinator;
- 5.1.2.1.3. Assesses the training needs of the school division in connection with complaints referred by the Title IX Coordinator;
- 5.1.2.1.4. Arranges necessary training; and
- 5.1.2.1.5. 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.

5.1.3. Compliance Officer Formal Procedure

- 5.1.3.1. Upon receiving a referral of a complaint of alleged prohibited harassment from the Title IX Coordinator, the compliance officer shall immediately authorize or undertake an investigation. The investigation may be conducted by school personnel or a third party designated by the school division. The investigation shall be

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completed as soon as practicable, which generally should be 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 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.

- 5.1.3.2. The investigation may consist of personal interviews with the person allegedly harassed, the alleged harasser, and any others who may have knowledge of the alleged harassment or the circumstances giving rise to the complaint. The investigation may also consist of the inspection of any other documents or information deemed relevant by the investigator. The school division shall take necessary steps to protect the person allegedly harassed and others pending the completion of the investigation.
- 5.1.3.3. In determining whether alleged conduct constitutes a violation of this policy, the division shall consider, at a minimum:
 - 5.1.3.3.1. The surrounding circumstances;
 - 5.1.3.3.2. The nature of the behavior;
 - 5.1.3.3.3. Past incidents or past or continuing patterns of behavior;
 - 5.1.3.3.4. The relationship between the parties;
 - 5.1.3.3.5. How often the conduct occurred;
 - 5.1.3.3.6. 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);
 - 5.1.3.3.7. The location of the alleged harassment;
 - 5.1.3.3.8. The ages of the parties; and
 - 5.1.3.3.9. The context in which the alleged incidents occurred.

Whether a particular action or incident constitutes a violation of this policy requires a case-by-case determination based on all of the facts and circumstances revealed after a complete and thorough investigation.

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- 5.1.3.4. The compliance officer shall issue a written report to the division superintendent upon completion of the investigation. If the complaint involves the division superintendent, then the report shall be sent to the School Board. The report shall include a determination of whether the allegations are substantiated, whether this policy was violated and recommendations of corrective action, if any.
- 5.1.3.5. All employees shall cooperate with any investigation of alleged harassment conducted under this policy or by an appropriate state or federal agency.

5.1.4. Action by Division Superintendent

- 5.1.4.1. Within 5 calendar days of receiving the compliance officer’s report, the division superintendent or his 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 his designee determines that prohibited harassment occurred, the school division shall take prompt, appropriate action to address and remedy the violation as well as prevent any recurrence. Such action may include discipline up to and including expulsion (student) or dismissal (employee). Whether or not the division superintendent or his designee determines that prohibited harassment occurred, the division superintendent or his designee may determine that school-wide or division-wide training be conducted or that the person allegedly harassed receives counseling.

5.1.5. Appeal

- 5.1.5.1. If the division superintendent or his 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 calendar 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 and the division superintendent and any other individual the School Board deems relevant.
- 5.1.5.2. If the division superintendent or his 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.
- 5.1.5.3. Employees may choose to pursue their complaints under this policy through the relevant employee grievance procedure instead of the complaint procedure in this policy.

5.2. Compliance Officer Informal Procedure

- 5.2.1. If the person allegedly harassed and the person accused of harassment agree, the principal or designee 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 procedures at any time in favor of the initiation of the Compliance Officer Formal Procedures set forth herein. The principal or 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.

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6. Sexual Harassment Prohibited by Title IX

6.1. Definitions

- 6.1.1. **"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.
- 6.1.2. **"Complainant"** means an individual who is alleged to be the victim of conduct that could constitute sexual harassment prohibited by Title IX.
- 6.1.3. **"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.
- 6.1.4. **"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.
- 6.1.5. **"Respondent"** means an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment prohibited by Title IX.
- 6.1.6. **"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.

6.2. Title IX Grievance Process

6.2.1. Generally

- 6.2.1.1. 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,

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or by mail to the office address listed for the Title IX Coordinator.

- 6.2.1.2. 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.
- 6.2.1.3. 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.
- 6.2.1.4. 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.
- 6.2.1.5. 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.
- 6.2.1.6. 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.
- 6.2.1.7. Nothing herein precludes a non-student employee respondent from being placed on administrative leave during the pendency of a grievance process.
- 6.2.1.8. 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.
- 6.2.1.9. The respondent is presumed not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process.
- 6.2.1.10. 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.

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- 6.2.1.11. 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.
- 6.2.1.12. 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.
- 6.2.1.13. A finding of responsibility may result in disciplinary action up to and including expulsion for students or dismissal of employees.
- 6.2.1.14. The standard of evidence used to determine responsibility is preponderance of the evidence.
- 6.2.1.15. 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.

6.2.2. Notice of allegations

- 6.2.2.1. On receipt of a formal complaint, the Title IX Coordinator gives the following written notice to the parties who are known:
 - 6.2.2.1.1. 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.
- 6.2.2.2. The written notice
 - 6.2.2.2.1. 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;
 - 6.2.2.2.2. 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

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6.2.2.2.3. 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.

6.2.2.3. 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.

6.2.3. Dismissal of formal complaints

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

6.2.3.1.1. would not constitute sexual harassment prohibited by Title IX even if proved,

6.2.3.1.2. did not occur in the School Board's education program or activity, or

6.2.3.1.3. did not occur against a person in the United States.

6.2.3.2. 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.

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

6.2.3.3.1. a complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations therein;

6.2.3.3.2. the respondent is no longer enrolled or employed by the School Board; or

6.2.3.3.3. specific circumstances prevent the School Board from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

6.2.4. Investigation of formal complaint

6.2.4.1. 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.

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- 6.2.4.2. The parties have an equal opportunity to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence.
- 6.2.4.3. The ability of the parties to discuss the allegations under investigation or to gather and present relevant evidence is not restricted.
- 6.2.4.4. 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 for respondent is not limited in any meeting or grievance proceeding.
- 6.2.4.5. 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.
- 6.2.4.6. 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.
- 6.2.4.7. 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.
- 6.2.4.8. 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.
- 6.2.5. Determination regarding responsibility
 - 6.2.5.1. The decision-maker, who cannot be the same person as the Title IX Coordinator or the investigator, must issue a written determination regarding responsibility.

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- 6.2.5.2. The written determination must include
 - 6.2.5.2.1. identification of the allegations potentially constituting sexual harassment prohibited by Title IX;
 - 6.2.5.2.2. 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;
 - 6.2.5.2.3. findings of fact supporting the determination;
 - 6.2.5.2.4. conclusions regarding the application of the School Board’s code of conduct or the superintendent’s Standard of Student Conduct to the facts;
 - 6.2.5.2.5. 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
 - 6.2.5.2.6. the procedures and permissible bases for the complainant and respondent to appeal.
- 6.2.5.3. The decision-maker must provide the written determination regarding responsibility to the parties simultaneously.
- 6.2.5.4. 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.
- 6.2.5.5. The Title IX Coordinator is responsible for effective implementation of any remedies.

6.2.6. Appeals

- 6.2.6.1. 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:
 - 6.2.6.1.1. procedural irregularity that affected the outcome of the matter;
 - 6.2.6.1.2. new evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and
 - 6.2.6.1.3. 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.

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

6.2.6.3. As to all appeals, the Title IX Coordinator

6.2.6.3.1. notifies the other party in writing when an appeal is filed and implements appeal procedures equally for both parties;

6.2.6.3.2. 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

6.2.6.3.3. ensures that the decision-maker for the appeal complies with the standards set forth in Title IX and this policy.

6.2.6.4. The appeal decision-maker

6.2.6.4.1. gives both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging the outcome;

6.2.6.4.2. reviews the evidence gathered by the investigator, the investigator's report, and the decision-maker's written decision;

6.2.6.4.3. issues a written decision describing the result of the appeal and the rationale for the result; and

6.2.6.4.4. provides the written decision simultaneously to both parties and the Title IX Coordinator.

6.2.7. Timelines

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

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

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

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

6.2.7.5. 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.

6.2.7.6. 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

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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.

6.2.8. Informal Resolution Process

6.2.8.1. 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.

6.2.8.2. 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:

6.2.8.2.1. 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;

6.2.8.2.2. the parties, voluntarily and in writing, consent to the informal resolution process; and

6.2.8.2.3. the informal resolution process cannot be used to resolve allegations that an employee sexually harassed a student.

6.2.8.3. 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.

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

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

6.2.9. Recordkeeping

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

6.2.9.1.1. 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

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Board's education program or activity;

6.2.9.1.2. any appeal and the result therefrom;

6.2.9.1.3. any informal resolution and the result therefrom; and

6.2.9.1.4. 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 web site.

6.2.9.2. 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.

7. Retaliation

7.1. Retaliation against students or school personnel who report harassment or participate in any related proceedings is prohibited. The School Board shall take appropriate action against students or school personnel who retaliate against any student or school personnel who reports alleged harassment or participates in related proceedings.

8. Right to Alternative Complaint Procedure

8.1. 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 civil action, filing a complaint with outside agencies or seeking redress under state or federal law.

9. Prevention and Notice of Policy

9.1. Responsibility for protecting students from sexual misconduct and abuses is shared by the School Board, Superintendent, administrators, teachers and other School Board employees, school volunteers, parents, state agencies, and law enforcement.

9.2. In addition to other conduct specifically addressed by this policy, it is imperative that School Board employees and volunteers take only appropriate actions and communications with Fauquier County Public Schools students, free from sexually harassing behavior and that avoid the appearances of impropriety. School Board employees and volunteers may protect themselves from misunderstandings and false accusations by adhering to proper professional interactions with students. School Board employees and volunteers should be aware of, and refrain from engaging in, behaviors and communications often associated with inappropriate conduct that can create an appearance of impropriety including, but not limited to:

9.2.1. Conducting on-going, private conversations with individual students that are unrelated to school activities or the well-being of the students and that take place in locations inaccessible to others;

9.2.2. Inviting a student or students for home visitations without informing the parents and receiving express consent for the visits from the parents;

9.2.3. Visiting the homes of students without the knowledge of the parents;

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- 9.2.4. Inviting students for social interactions or contact off school property without the knowledge and express permission of the parents; and
- 9.2.5. Transporting students in personal vehicles without the knowledge and express permission of the parents.
- 9.3. Personal contact and communications between adults and students must always be nonsexual, appropriate to the circumstances and unambiguous in meaning. School Board employees and volunteers should respect boundaries consistent with their roles as educators, mentors and caregivers. Violations of these boundaries include, but are not limited to:
 - 9.3.1. Physical contact with a student that could be reasonably interpreted as constituting sexual harassment;
 - 9.3.2. Showing pornographic materials to a student;
 - 9.3.3. Unnecessarily invading a student’s personal privacy;
 - 9.3.4. Singling out a particular student or group of students for personal attention and friendship beyond the bounds of an appropriate educator/mentor-student relationship;
 - 9.3.5. Conversation of a sexual nature with students not related to the employee’s professional responsibilities; and
 - 9.3.6. A flirtatious, romantic or sexual relationship with a student.
- 9.4. Electronic Communication
 - 9.4.1. Digital technology and social networking provide multiple means for educators and other School Board employees to communicate with students and personalize learning. To avoid violations of this policy or the appearance of an impropriety, electronic communications between School Board employees or volunteers and students shall be transparent, accessible to supervisors and parents, and professional in content and tone. As with in-person communications, School Board employees and volunteers should avoid appearances of impropriety and refrain from inappropriate electronic communications with students. Factors that may be considered in determining whether an electronic communication is inappropriate include, but are not limited to:
 - 9.4.1.1. The subject, content, purpose, authorization, timing and frequency of the communication;
 - 9.4.1.2. Whether there was an attempt to conceal the communication from supervisors and/or parents;
 - 9.4.1.3. Whether the communication could be reasonably interpreted as soliciting sexual contact or a romantic relationship; and
 - 9.4.1.4. Whether the communication was sexually explicit.
- 9.5. Training to prevent sexual harassment based on race, national origin, disability and religion should be included in employee and student orientations as well as employee in-service training.
- 9.6. This policy shall be
 - 9.6.1. Displayed in prominent areas of each division building in a location accessible to students, parents and school personnel;

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9.6.2. 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 shall be notified annually of the names and contact information of the compliance officers.

10. False Charges

10.1. Students or school personnel who knowingly make false charges of harassment shall be subject to disciplinary action as well as any possible civil or criminal legal proceedings.

LEGAL REFERENCE: Title VII of the Civil Rights Act of 1964, as amended in 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. Parts 81, 86; 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), 22.1-306, and 22.1-253.13:7; Regulations of the Virginia Board of Education, Procedures for Adjusting Grievances, 2 VAC 20-90-10, et seq.; Virginia Department of Education “Guidelines for the Prevention of Sexual Misconduct and Abuse in Virginia Public Schools” (March 2011).

Form Follows

ACCOMPANYING FORM

Form 5-1.7 F1 REPORT OF HARASSMENT

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5-1.7 F1 REPORT OF HARASSMENT

Fauquier County Public Schools

Report of Harassment

Name of Complainant: _____

For Students, School Attending: _____

For Employees, Position: _____

Address and Phone Number: _____

Date(s) of Alleged Incident(s) of Harassment: _____

Name of person(s) you believe harassed you or others: _____

If the alleged harassment was toward another, please identify that person: _____

Please describe in detail the incident(s) of alleged harassment, including where and when the incident(s) occurred. Please name any witnesses that may have observed the incident(s). Attach additional pages if necessary.

Please describe any past incidents that may be related to this complaint. Attach additional pages if necessary.

I certify that the information provided in this report is true, correct and complete to the best of my knowledge:

Signature of Complainant

Date

Complaint Received By: _____
(Principal or Compliance Officer)

Date