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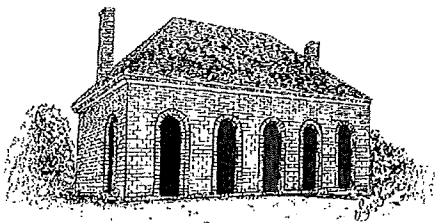
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File No.: 5513

January 7, 2022

BY HAND DELIVERY

Frank D. Hargrove, Jr., Clerk
Hanover County Circuit Court
7507 Library Drive
Hanover, VA 23069

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JAN 07 2022
CLERK'S OFFICE
HANOVER CIRCUIT COURT

Re: Case No. CL21003942-00; *Emily and William Hulette, et al v. Hanover County School Board*

Dear Mr. Hargrove:

On behalf of the Hanover County School Board, please find enclosed the Answer, with accompanying exhibits, regarding the above-referenced pending litigation. Kindly file this among the papers in this cause. By copy of the same to counsel of record, I am providing them with the enclosed.

Thank you, in advance, for your kind assistance in this matter.

Very truly yours,

Lisa Ashworth Seward
Deputy County Attorney

LAS/mst
Enclosures

cc: Ola J. Hawkins, Chair, Hanover County School Board (via e-mail)
Michael Gill, Ed.D., Superintendent, Hanover County Public Schools (via e-mail)
Eden B. Heilman, Counsel for Plaintiff (via e-mail)
Monique Y. Gillum, Counsel for Plaintiff (via e-mail)

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IN THE CIRCUIT COURT FOR THE COUNTY OF HANOVER

JAN 07 2022

EMILY and WILLIAM HULETTE,)
KELLY MERRILL,)
ASHLEY HESSION,)
STEPHANIE FISHER, and)
ANN and HARRY ZWECKBRONNER,)

CLERK'S OFFICE
HANOVER CIRCUIT COURT

Plaintiffs,)

v.)

Case No.: CL21003942-00

HANOVER COUNTY SCHOOL BOARD,)

Defendant.)

ANSWER OF HANOVER COUNTY SCHOOL BOARD

Defendant Hanover County School Board (“School Board”), by counsel, responds to the allegations of the Verified Complaint (“Complaint”) of Emily and William Hulette, Kelly Merrill, Ashley Hession, Stephanie Fisher and Ann and Harry Zweckbronner (“Plaintiffs”), in accordance with the numbered paragraphs of the Complaint. The School Board generally denies all allegations of the Complaint except those designated allegations or paragraphs that the School Board expressly admits below.

1. The allegations of paragraph 1 consist of legal argument to which no response is required. To the extent that paragraph 1 contains factual allegations to which a response is required, such factual allegations are denied. In addition, the School Board denies the allegations which indicate that the Plaintiffs are entitled to the relief requested beyond that set forth in §22.1-87 of the Code of Virginia.

2. With respect to the allegations contained in paragraph 2 which reference Section 22.1-23.3 of the Code of Virginia, the School Board respectfully refers the Court to Section 22.1-

23.3 of the Code of Virginia for the full text and true meaning thereof. The remainder of the allegations contained in paragraph 2 of the Complaint consist of legal argument to which no response is required.

3. Admitted. With respect to the allegations contained in paragraph 3 which reference the Virginia Department of Education's ("VDOE") Model Policies for the Treatment of Transgender Students in Virginia's Public Schools ("Model Policies"), the School Board respectfully refers the Court to the Model Policies, a copy of which is attached as Exhibit "A" hereto, for the full text and true meaning thereof.

4. The School Board admits that the quoted language is set forth in the Model Policies and respectfully refers the Court to the Model Policies for the full text and true meaning thereof.

5. Admitted in part and denied in part. The School Board admits that there was no specific policy which addressed access to facilities such as restrooms by transgender students included within the Hanover County Public Schools Policy Manual as of September 7, 2021. The School Board affirmatively states that, as of September 7, 2021, the Hanover County Public Schools Policy Manual did not contain any provisions related to access to restrooms or locker rooms by students. The remainder of the allegations in paragraph 5 consist of legal argument to which no response is required. To the extent that a response is required, the School Board respectfully refers the Court to the Minutes of the November 9, 2021 School Board Meeting, a copy of which is attached hereto as Exhibit "B", for the full description of the actions taken by the School Board at that meeting. The School Board denies that the effect of the November 9, 2021 vote regarding the proposed policy revisions constituted a decision not to enact "any policy regarding bathroom access by transgender students" and affirmatively states that the Minutes reflect an intention to continue work in this area.

6. The allegations of paragraph 6 consist of a legal argument to which no response is required. To the extent that paragraph 6 contains factual allegations to which a response is required, such factual allegations are denied.

7. The allegations of paragraph 7 consist of legal argument to which no response is required. To the extent that paragraph 7 contains factual allegations to which a response is required, such factual allegations are denied.

8. The School Board admits that Plaintiffs have identified themselves as parents of transgender students who attend Hanover County Public Schools and that Plaintiffs are seeking judicial review of the action taken by the School Board on November 9, 2021. The School Board denies the remainder of paragraph 8.

9. The allegations contained in paragraph 9 consist of legal argument to which no response is required. To the extent that paragraph 9 contains factual allegations to which a response is required, such factual allegations are denied.

10. The School Board admits that Emily and William Hulette are listed as the parents of a student who is enrolled in the Hanover County Public Schools, and that their listed address at the start of the 2021-22 school year places their residence within the Cold Harbor Magisterial District. The School Board denies knowledge or information sufficient to admit or deny the remainder of the allegations of the second sentence of paragraph 10. With respect to the remainder of the allegations set forth in paragraph 10, the School Board states that, in response to requests as to which bathroom the Hulette's child could use, HCPS provided access to the boys' restroom, faculty restrooms, and the restroom located at the school clinic. The allegations contained in the last sentence of paragraph 10 consist of legal argument to which no response is required.

11. The School Board admits that Kelly Merrill is listed as the parent of a student who is enrolled in the Hanover County Public Schools, and that her listed address at the start of the 2021-22 school year places her residence within the Ashland Magisterial District. The School Board denies knowledge or information sufficient to admit or deny the remainder of allegations of the first, second and third sentences of paragraph 11. The School Board admits that, during the first week of school in September 2021, there was some confusion regarding the student's use of the restroom due to the student's assigned counselor being out on medical leave. The School Board avers that, since the initial confusion was quickly resolved, the student has had access to the boys' restroom. The School Board admits that Ms. Merrill submitted a Title IX grievance to HCPS, but denies the remainder of the fifth sentence of paragraph 11. The School Board admits that Ms. Merrill received an e-mail from the school counselor confirming that faculty at the assigned school would be notified that the child would be permitted to use the boys' restroom. The remainder of the allegations set forth in paragraph 11 consist of legal argument to which no response is required; to the extent that a response is required, the School Board denies those allegations.

12. The School Board admits that Ashley Hession is listed as the parent of a student who is enrolled in the Hanover County Public Schools, and that her listed address at the start of the 2021-22 school year places her residence within the Chickahominy Magisterial District. The School Board denies knowledge or information sufficient to admit or deny the allegations of the first and second sentences of paragraph 12. The School Board denies knowledge of any request or attempt by the student to use the boys' restroom at the student's school but admits that the student is permitted to use the restroom located in the nurse's office. The remainder of the allegations set forth in paragraph 12 consist of legal argument to which no response is required.

13. The School Board admits that Stephanie Fisher is listed as the parent of a student who is enrolled in the Hanover County Public Schools, and that her listed address at the start of the 2021-22 school year places her residence within the Beaverdam Magisterial District. The School Board denies knowledge or information sufficient to admit or deny the allegations of the first, second, and fourth sentences of paragraph 13. The School Board affirmatively states that this student is permitted to use the girls' restroom. The remainder of the allegations set forth in paragraph 13 consist of legal argument to which no response is required.

14. The School Board admits that Ann and Harry Zweckbronner are listed as the parents of a student who is enrolled in the Hanover County Public Schools, and that their listed address at the start of the 2021-22 school year places their residence within the Cold Harbor Magisterial District. The School Board denies knowledge or information sufficient to admit or deny the allegations of the first sentence of paragraph 14. The remaining allegations set forth in paragraph 14 consists of a legal argument to which no response is required; to the extent that a response is required, the School Board denies these allegations.

15. Admitted.

16. The allegations of paragraph 16 consist of legal argument to which no response is required. The School Board respectfully refers the Court to the sections of the Code of Virginia cited in paragraph 16 for the full text and true meaning thereof.

17. Admitted.

18. Admits that House Bill 145 and Senate Bill 161 were passed by the General Assembly in 2020 and signed by Governor Northam. The School Board denies knowledge or information sufficient to form the basis as to the truth of the remaining allegations contained in paragraph 18. To the extent that paragraph contains allegations regarding the purpose of Section

22.1-22.3 of the Code of Virginia, the School Board respectfully refers to the Court to that section for the full text and true meaning thereof.

19. Admitted.

20. Admitted.

21. Admitted.

22. The School Board admits that the Model Policies include the referenced statement, and respectfully refers the Court to Model Policies for the full text and true meaning thereof.

23. The School Board admits that the Model Policies include the referenced statements, and respectfully refers the Court to Model Policies for the full text and true meaning thereof.

24. Admitted.

25. Admitted.

26. The School Board admits that the items discussed in paragraph 26 were addressed in Superintendent's Memo #085-21, and respectfully refers the Court to that document for the full text and true meaning thereof.

27. Admitted.

28. The School Board denies the allegations in the first sentence of paragraph 28 as it asserts that the School Board was required to adopt the Model Policies issued by the VDOE. With respect to the remainder of the allegations contained in paragraph 28, the School Board admits that the first day of school was September 7, 2021 for certain students.

29. Admitted.

30. The School Board denies the allegations contained in paragraph 30 which attempt to characterize the intent and effect of the policy revisions discussed at the November 9, 2021

meeting of the School Board as legal argument to which no response is required. Otherwise, the School Board admits the allegations in paragraph 30.

31. Admitted.

32. The School Board denies that the allegations contained in paragraph 32 accurately describe the School Board's action on November 9, 2021, but admits that it approved a motion to disapprove the proposed revisions to School Board Policy 7-1.2 (hereinafter "Policy 7-1.2"), a copy of which is attached hereto as Exhibit "C". The School Board respectfully refers the Court to the attached Minutes of the November 9, 2021 meeting, for the complete description of the action taken by the School Board at that meeting.

33. The School Board admits the allegations contained in paragraph 33, and affirmatively states that there are no provisions in School Board policies regarding the use of bathroom facilities by any student, faculty member, staff, or visitor.

34. The allegations contained in paragraph 34 consist of legal argument to which no response is required. To the extent that paragraph 34 contains factual allegations to which a response is required, such factual allegations are denied.

35. The allegations contained in paragraph 35 consist of legal argument to which no response is required. To the extent that paragraph 35 contains factual allegations to which a response is required, such factual allegations are denied.

36. The allegations contained in paragraph 36 consist of legal argument to which no response is required. To the extent that paragraph 36 contains factual allegations to which a response is required, such factual allegations are denied.

37. The allegations contained in paragraph 37 consist of legal argument to which no response is required. To the extent that paragraph 37 contains factual allegations to which a response is required, such factual allegations are denied.

38. The allegations contained in paragraph 38 consist of legal argument to which no response is required. To the extent that paragraph 38 contains factual allegations to which a response is required, such factual allegations are denied.

39. The allegations contained in paragraph 39 consist of legal argument to which no response is required. To the extent that paragraph 39 contains factual allegations to which a response is required, such factual allegations are denied.

40. The School Board's responses to paragraphs 1 through 39 are incorporated herein by reference.

41. Admitted.

42. The School Board admits the allegation contained within the first sentence of paragraph 42. The remaining sentences consist of legal argument to which no response is required.

43. The allegations contained in paragraph 43 consist of legal argument to which no response is required. To the extent that paragraph 43 contains factual allegations to which a response is required, such factual allegations are denied.

44. The allegations contained in paragraph 44 consist of legal argument to which no response is required. To the extent that paragraph 44 contains factual allegations to which a response is required, such factual allegations are denied.

45. The allegations contained in paragraph 45 consist of legal argument to which no response is required. To the extent that paragraph 45 contains factual allegations to which a response is required, such factual allegations are denied.

46. The allegations contained in paragraph 46 consist of legal argument to which no response is required.

47. The allegations contained in paragraph 47 consist of legal argument to which no response is required. To the extent paragraph 47 attempts to describe the effect of the provisions of Section 22.1-87 of the Code of Virginia, the School Board respectfully refers the Court to that section for the full text and true meaning thereof.

48. The allegations contained in paragraph 48 consist of legal argument to which no response is required. To the extent that paragraph 48 contains factual allegations to which a response is required, such factual allegations are denied.

49. The School Board's responses to paragraphs 1 through 48 are incorporated herein by reference.

50. Admitted.

51. The School Board admits that such language is included within the Model Policies, and respectfully refers the Court to the Model Policies for full text and true meaning thereof.

52. The School Board admits that such language is included within the Model Policies, and respectfully refers the Court to the Model Policies for full text and true meaning thereof.

53. The School Board admits the allegations contained in paragraph 53, and affirmatively states that there are no provisions in School Board policies regarding the use of bathroom facilities by any student, faculty member, staff, or visitor.

54. The School Board admits that there was a vote to disapprove proposed revisions to Policy 7-1.2 on November 9, 2021, and respectfully refers this Court to the Minutes of the November 9, 2021 School Board meeting, for the full description of the School Board's action at

that meeting. The School Board otherwise denies the allegations contained in paragraph 54 which consist of legal argument to which no response is required.

55. The allegations contained in paragraph 55 consist of legal argument to which no response is required.

56. The allegations contained in paragraph 56 consist of legal argument to which no response is required.

57. The allegations contained in paragraph 57 consist of legal argument to which no response is required.

RESPONSES AND AFFIRMATIVE DEFENSES

The School Board has not violated Section 22.1-23.3 of the Code of Virginia

58. The School Board's actions on November 9, 2021, at which it fails to adopt proposed revisions to Policy 7-1.2, do not violate the provisions of Section 22.1-23.3 of the Code of Virginia.

59. Section 22.1-23.3 of the Code of Virginia provides that VDOE shall "develop and make available to each school board model policies concerning the treatment of transgender students in public elementary and secondary schools that address common issues regarding transgender students in accordance with evidence-based best practices and include information, guidance, procedures, and standards." Va. Code § 22.1-23.3. Section 22.1-23.3 of the Code of Virginia then lists eight areas that VDOE was to include in its model policies, including "[S]tudent participation in sex-specific school activities and events and use of school facilities. Activities and events do not include athletics." Va. Code § 22.1-23.3 (A)(8).

60. Section 22.1-23.3 (B) of the Code of Virginia provides that "Each school board shall adopt policies that are consistent with but may be more comprehensive than the model

policies developed by the Department of Education pursuant to subsection A.” Va. Code § 22.1-23.3 (B). The third enactment clause of Chapters 153 and 154 of the Acts of Assembly of 2020, which added Section 22.1-23.3 to the Code of Virginia, requires that school boards are to adopt policies that are “consistent with but may be more comprehensive” than the Model Policies.

61. The action that the Plaintiffs request the Court to review pursuant to Section 221.-87 of the Code of Virginia is the School Board’s decision on November 9, 2021 to not adopt revisions to Policy 7-1.2 at that time.

62. As seen in the minutes of the School Board’s November 9, 2021 meeting, while the School Board did not approve revisions to Policy 7-1.2 at that meeting, School Board members indicated that they wished to continue to study the issue. See, e.g., Exhibit B, Page 3 (the School Board wanted “the opportunity to continue working on revisions…”).

63. Section 22.1-23.3 of the Code of Virginia does not require that school boards include the language of the Model Policies into local policies or to adopt policies that incorporate the Model Policies into local policy. Rather, school boards are required to ensure that their policies—whether as those policies existed prior to the enactment of Section 22.1-23.3 of the Code of Virginia or after the issuance of the Model Policies—are “consistent with” the Model Policies. The Circuit Court for the City of Lynchburg concluded that the Model Policies “are a guidance document as defined by Va. Code §2.2-4101.” Christian Action Network v. Atif Qarni, 2021 Va. Cir. LEXIS 164 (2021) at *8.

64. Accordingly, in order to prevail, Plaintiffs must show either (1) that the School Board’s current policies are inconsistent with the Model Policies or that (2) the School Board amended current policies in a way that is inconsistent with the Model Policies.

65. Policy 7-1.2, as it existed prior to the issuance of the Model Policies, includes the following language:

The Hanover County 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, national origin, disability, sex, sexual orientation, **gender identity**, ethnicity, ancestry, marital or parental status, or on any other basis prohibited by law.

Exhibit C at p. 1 (emphasis added).

66. On November 9, 2021, the School Board decided not to adopt the proposed revision but to have "opportunity to continue working on revisions" Exhibit B, Page 3. This action did not constitute the adoption of any new policy that was inconsistent with the Model Policies. As noted above, current School Board policy provides that Hanover County Public Schools' programs and services do not discriminate against any individual for reasons of gender identity.

67. The Constitution of Virginia and the Code of Virginia recognize the School Board's primary and sole role in the operation of public schools in Hanover County. Section 22.1-23.3 of the Code of Virginia recognizes this as well. While the General Assembly could have required that school boards adopt particular language in their local policies, or include the Model Policies themselves in local policy, it did not. Rather, it merely required that school boards review their policies to ensure that they were not inconsistent with Section 22.1-23.3 of the Code of Virginia. The School Board is in the process of doing that, and will continue to do so going forward.¹

¹ At the meeting on November 9, 2021, the School Board revised Policy 7-1.4, a copy of which is attached hereto as Exhibit "D", which relates to student records. This policy revision included language from the Model Policies regarding that issue as existing policy was silent on the issue of situations where a student's sex recorded at birth was different than the student's gender identity while a student at Hanover County Public Schools. Conversely, with respect to the usage of facilities, current policy provides that Hanover County Public Schools' programs and services do not discriminate against any student based on the student's gender identity.

68. As Plaintiffs have failed to show that the School Board’s current policies are “inconsistent with” the Model Policies,² the Court should uphold the School Board’s action on November 9, 2021.

69. Should the Court find that the School Board “exceeded its authority, acted arbitrarily or capriciously, or abused its discretion” on November 9, 2021, the Court should remand the matter back to the School Board for further action, consistent with any findings of this Court.

The issuance of an injunction is not appropriate

70. While Section 22.1-87 of the Code of Virginia authorizes the Court to review the actions taken by the School Board, there is no authority for the Court to issue injunctive relief.

71. Section 22.1-87 of the Code of Virginia does not authorize the issuance of an injunction in any form, whether preliminary, temporary or permanent. By enacting Section 22.1-87 of the Code of Virginia, the General Assembly of Virginia provided an adequate remedy in the courts of common law for “any parent, custodian or legal guardian of a pupil attending the public schools” who is aggrieved by an action undertaken by the local school board to seek judicial review of that action. Va. Code § 22.1-87. In Martinson v. Evans, the Fairfax Circuit Court addressed the scope of Section 22.1-87. The court there stated:

Virginia Constitution, Article VIII, Section 7 mandates that, “[t]he supervision of schools in each school division shall be vested in a school board.” Va. Const. Art. VIII, § 7. The school board’s supervisory authority may not, however, be exercised without restraint or escape judicial review. The General Assembly has allowed aggrieved parties to seek judicial review of school board actions pursuant to Title 22.1-87. An express statutory right of judicial enforcement is exclusive unless Title 22.1-87 says otherwise. See Cherrie [v. Va. Health Servs.], 292 Va. 309, 316, 787 S.E.2d 855 (2016)]. A fundamental principle of statutory construction is that, “where a statute creates a right and provides a remedy for the vindication of that

² While the Complaint contains a number of allegations regarding the Plaintiffs and their children, those allegations are not relevant to the question presented, namely, whether the School Board “exceeded its authority, acted arbitrarily or capriciously, or abused its discretion” in its decision to not approve the proposed revisions to Policy 7-1.2 on November 9, 2021.

right, then that remedy is exclusive unless the statute says otherwise." School Bd. of Norfolk v. Giannoutsos, 238 Va. 144, 147, 380 S.E.2d 647, 5 Va. Law Rep. 2855 (1989). Indeed, "we do not infer a private right of action when the General Assembly expressly provides a different method of judicial enforcement." Cherrie, 292 Va. at 316. Title 22.1 is no exception to this longstanding legal principle. To hold that aggrieved individuals can seek relief outside of Title 22.1 would create an unprecedented scope of judicial authority and violate Article VIII's mandate.

Martinson v. Evans, 2018 Va. Cir. LEXIS 18 (Fairfax Cnty. (2018)), at *7-8.

72. Section 22.1-87 of the Code of Virginia provides the exclusive remedy to review an action of the School Board. Accordingly, injunctive relief, which is not clearly authorized by Section 22.1-87 of the Code of Virginia, is not available in an action to review a decision made by a local school board.

73. As noted above, in the event that the Court finds that the School Board did not comply with applicable law in its actions on November 9, 2021, the appropriate remedy is for the Court to remand the matter to the School Board for further actions that are consistent with the Court's findings.

Plaintiffs have not demonstrated that they are entitled to injunctive relief

74. Assuming, *arguendo*, that the Plaintiffs were entitled to seek an injunction in this action, they have failed to sufficiently allege the four elements necessary for the issuance of a temporary or preliminary injunction.

75. In Martinson v. Evans, 2018 Va. Cir. LEXIS 18, *11., the Fairfax Circuit Court addressed the question of whether a preliminary injunction is appropriate in an action brought pursuant to Section 22.1-87 of the Code of Virginia. The Martinson Court held:

In Winter v. National Resources Defense Council, Inc., 555 U.S. 7, 20, 129 S.Ct. 365, 172 L.Ed. 3d 249 (2008), the Supreme Court of the United States established a four part test for determining whether to grant a preliminary injunction: 1) the likelihood of success on the merits; (2) the likelihood of irreparable harm to the

plaintiff if relief is denied; (3) the balance of equities tips in the plaintiff's favor; and (4) the injunction is in the public interest.

Martinson, 2018 Va. Cir. LEXIS 18, *11.

76. In May v. R.A. Yancey Lumber Corp., the Virginia Supreme Court reiterated that a preliminary injunction would not be appropriate if the plaintiff had another adequate remedy at law.

In general, a court may not grant injunctive relief unless a party has shown that party would suffer irreparable harm without the injunction, and that the party has not adequate remedy at law. Wright v. Castles, 232 Va. 218, 224, 349 S.E.2d 125, 3 Va. Law Rep. 945 (1986). Granting or denying a temporary injunction is a discretionary act arising from a court's equitable powers. Manchester Cotton Mills v. Town of Manchester, 66 Va. 825, 827 (1975). A temporary injunction allows a court to preserve the status quo between the parties while litigation is ongoing. Iron City Sav. Bank v. Isaacsen, 158 Va. 609, 625 (164 S.E. 520 (1932)).

May, 297 Va. 1 *18, 822 S.E.2d 358, 367, 2019 Va. LEXIS 1, 21-22 (2019).

77. As set forth above in Paragraphs 73-74, the Virginia General Assembly has provided an adequate remedy at law to Plaintiffs; namely, to remand the matter to the School Board for further actions that are consistent with the Court's findings.

78. Plaintiffs have failed to demonstrate in their Complaint how they satisfy any of the required showings for a preliminary or temporary injunction, much less that they can demonstrate that this situation meets the four-part test established by the U.S. Supreme Court.

Plaintiffs are not entitled to costs in this action

79. In their Prayer for Relief, Plaintiffs request that the Court award "reasonable costs and expenses of this action" to Plaintiffs. Compl., Prayer for Relief, ¶¶ E. As this relief is not available in a declaratory judgment action, this request must be dismissed.

80. The Supreme Court of Virginia has held that the Declaratory Judgment Act does not authorize the award of attorneys' fees unless some other, underlying statute authorizes such an

award. In Board of Supervisors v. Windmill Meadows, LLC, 287 Va. 170, 752 S.E.2d 837 (2014), the Supreme Court stated,

The plain language of the Declaratory Judgment Act, Code § 8.01-184 *et seq.*, “does not authorize a court to make an award of attorney's fees” to a prevailing party. Russell County Department of Social Services. v. O'Quinn, 259 Va. 139, 142, 523 S.E.2d 492, 493 (2000). Nonetheless, in some instances an award of attorney's fees may be proper in an action seeking declaratory relief if such an award is authorized by another statute or contract implicated in the action. *See, e.g., Mozley v. Prestwoud Board of Directors*, 264 Va. 549, 555-56, 570 S.E.2d 817, 821 (2002). In order for a court to award attorney's fees in such cases, the party seeking the award must show that the statute or contract that authorizes such awards is applicable to the judgment obtained.

Board of Supervisors v. Windmill Meadows, LLC, 287 Va. 170, 752 S.E.2d 837.

81. The present case is a declaratory judgment action challenging a decision by the School Board. Court review of school board decisions is governed by Section 22.1-87 of the Code of Virginia, which does not authorize an award of fees or costs.

82. Accordingly, the request for relief that includes costs or fees must be dismissed.

WHEREFORE, the School Board prays that the Complaint be dismissed and filed among the ended causes.

HANOVER COUNTY SCHOOL BOARD

By: *Lisa Ashworth Seward*
Counsel

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Model Policies for the Treatment of Transgender Students in Virginia's Public Schools



VIRGINIA
IS FOR
LEARNERS

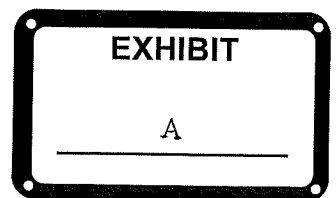


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Acknowledgements

The Virginia Department of Education (VDOE) would like to extend appreciation to those who provided input and offered expertise throughout the development of these model policies.

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L. Frances Brown (she/her), School Psychologist (retired), Henrico County Public Schools

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Patricia Popp (she/her), Ph. D., Project HOPE-VA State Coordinator, Clinical Associate Professor, William & Mary School of Education

John Riofrio (he/him), Parent Representative

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Introduction

The **Model Policies for the Treatment of Transgender Students in Public Elementary and Secondary Schools** document was developed in response to House Bill 145 and Senate Bill 161, enacted by the 2020 Virginia General Assembly:

“1. That the Code of Virginia is amended by adding a section numbered 22.1-23.3 as follows § 22.1-23.3. Treatment of transgender students; policies.

A. The Department of Education shall develop and make available to each school board model policies concerning the treatment of transgender students in public elementary and secondary schools that address common issues regarding transgender students in accordance with evidence-based best practices and include information, guidance, procedures, and standards relating to:

1. Compliance with applicable nondiscrimination laws;
2. Maintenance of a safe and supportive learning environment free from discrimination and harassment for all students;
3. Prevention of and response to bullying and harassment;
4. Maintenance of student records;
5. Identification of students;
6. Protection of student privacy and the confidentiality of sensitive information;
7. Enforcement of sex-based dress codes; and
8. Student participation in sex-specific school activities, events, and use of school facilities.

Activities and events do not include athletics:

B. Each school board shall adopt policies that are consistent with but may be more comprehensive than the model policies developed by the Virginia Department of Education (VDOE) pursuant to subsection A:

1. That the Virginia Department of Education shall develop and make available to each school board model policies pursuant to subsection A of § 22.1-23.3 of the *Code of Virginia*, as created by this act, no later than December 31, 2020.
2. That each school board shall adopt policies pursuant to subsection B of § 22.1-23.3 of the *Code of Virginia*, as created by this act, no later than the beginning of the 2021–2022 school year.”

In June 2020, an advisory committee was formed to review model policies, local policies throughout the nation, and resources pertaining to the treatment of transgender students in public schools. The committee included school-based personnel representing diverse Superintendent’s Regions and disciplines, representatives from state professional associations, parent representatives, student representatives, representatives from advocacy organizations, and specialists from the Virginia Department of Education (VDOE). The development of these model policies is a result of consultation and collaboration with multiple stakeholders throughout the Commonwealth with a variety of backgrounds and expertise.

Background

Terminology

Transgender and nonbinary students may use different terms to describe their lives and gender experiences. While terminology and language differ and evolve based on region, language, race or ethnicity, age, culture, and other factors, for purposes of discussion in this document, the following terms are used:

- **Cisgender:** An adjective describing a person whose gender identity corresponds with the gender society typically associates with the sex they were assigned at birth.
- **Gender:** A set of social, psychological, and emotional traits that classify an individual as typically masculine or feminine, although the social construct of gender may be more diverse across a continuum rather than as a binary system.
- **Gender-expansive/gender-diverse/gender-fluid/gender-nonbinary/agender/gender queer:** Terms that convey a wider, more inclusive range of gender identity and/or expression than typically associated with the social construct of a binary (two discrete and opposite categories of male and female) gender system.
- **Gender Expression:** The manner in which a person represents or expresses their gender identity or role to others, often through appearance, clothing, hairstyles, behavior, activities, voice, or mannerisms. Gender expression may change over time and from day-to-day and is not necessarily related to the person's gender identity.
- **Gender Identity:** A person's internal sense of their own identity as a boy/man, girl/woman, another gender, no gender, or outside the male/female binary. Gender identity is an innate part of a person's identity and can be the same or different from society's expectations with the sex they were assigned at birth.
- **Gender Nonconforming:** A person who does not conform to gender stereotypes. Their gender expression differs from society's expectations associated with the sex assigned at birth. Being gender nonconforming is distinct from being transgender, though some transgender people may consider themselves to be gender nonconforming.
- **Gender Transition:** The process of shifting toward living according to their gender identity, rather than the sex assigned at birth. Transitions can be at different levels, including social transition, such as new names, pronouns, appearance, and clothing. Some people may undergo medical transitions, such as hormone therapy or surgery.
- **LGBTQ+:** An acronym for "lesbian, gay, bisexual, transgender, queer/questioning, and others."
- **Nonbinary:** a term used to refer to people whose gender identity is not exclusively male or female, including those who identify with a different gender, a combination of genders, or no gender. Nonbinary may be considered a subset of transgender or a distinct

identity. Other similar terms may include genderqueer, gender fluid, agender, or Two-Spirit (for Native American Indian, Alaska Native, First Nation, or Indigenous communities).

- **Sex Assignment:** A label, generally “male” or “female,” that is typically assigned at birth on the basis of a cluster of physical and anatomical features. Intersex refers to someone whose combination of chromosomes, gonads, hormones, internal sex organs, and genitals differs from the two expected patterns of male or female.
- **Transgender:** A self-identifying term that describes a person whose gender identity is different from their sex assigned at birth. A **transgender girl** is a girl who was presumed to be male when she was born, and a **transgender boy** is a boy who was presumed to be female when he was born. Note that there is a wide range of gender identities in addition to transgender male and transgender female, such as nonbinary.

Related Laws

A brief summary of federal and state laws is included for informational purposes and to aid in the development of model policies for the treatment of transgender students. The summary provided in this section does not constitute legal interpretation nor advice. Given the changing legal landscape, including on-going litigation and different interpretations, school divisions should consult with their school board attorney.

First Amendment: The First Amendment protects freedom of speech and expression. Schools may not prevent students from expressing their identity.

Equal Protection Clause of the 14th Amendment: This clause guarantees every citizen equal protection under the law. It protects LGBTQ+ youth in schools from unfair or discriminatory school actions.

Title VII of the Civil Rights Act of 1964: The US Supreme Court ruled in June 2020 that this federal law includes protection based on sexual orientation and gender identity in its prohibition of employment discrimination.

Title IX of the Education Amendments of 1972: Title IX is a federal law that prohibits schools that receive federal financial assistance from limiting or denying a student’s participation in any school program on the basis of sex. This may be understood to prohibit discrimination, including sexual harassment, based on sex stereotypes, sexual orientation, and gender identity or transgender status.

Equal Access Act: This is a federal law that requires public secondary schools to provide equal access to extracurricular clubs. Schools must treat all clubs the same and use school resources in the same way, including for Gay-Straight Alliance or Gender-Sexuality Alliance (GSA) clubs.

Family Educational Rights and Privacy Act (FERPA): This is a federal law that protects the privacy of student educational records. It prohibits the improper disclosure of personally identifiable information from student records. Information relating to gender identity or sexual orientation may constitute personally identifiable information.

Health Insurance Portability and Accountability Act of 1996 (HIPAA): This is a federal law that mandates the privacy protections for individually identifiable health information. Demographic information such as gender may be considered protected health information under HIPAA.

Conversion Therapy Prohibited: § 54.1-2409.5. This Virginia state law prohibits licensed professionals from engaging in conversion therapy with youth under 18 years of age. Note that conversion therapy is opposed by most major professional organizations such as the American Psychiatric Association (APA, 2018), the American Counseling Association (ACA, n.d.), and the American Medical Association (AMA, 2019).

Virginia Values Act: This state law expands the *Virginia Human Rights Act* to prohibit discrimination in employment, housing, and public accommodations on the basis of sexual orientation and gender identity.

Virginia Anti-Bullying legislation: Virginia school boards are required to include bullying prevention as a part of character education (§ 22.1-208.01 of the *Code of Virginia*). In addition, school boards are expected to include bullying as a prohibited behavior in their student codes of conduct (§ 22.1-279.6.D of the *Code of Virginia*) and to implement policies and procedures to educate school board employees about bullying and the need to create a bully-free environment (§ 22.1-291.4 of the *Code of Virginia*). Finally, §§ 22.1-276.01 and 22.1-279.6 of the *Code of Virginia* requires including standards for reducing bias and harassment in the enforcement of any code of student conduct.

Virginia Identification Documents legislation: §§ 46.2-323, 46.2-341.12, 46.2-345, and 46.2-345.2 of the *Code of Virginia* require the Department of Motor Vehicles to offer any applicant the option to mark “male,” “female,” or “non-binary” when designating the applicant’s sex on an application for a driver’s license or special identification card. Additionally, §§ 32.1-261 and 32.1-269 of the *Code of Virginia* require the State Registrar to issue a new certificate of birth to show a change of sex upon request and, if a certified copy of a court order changing the person’s name is submitted, to include the person’s new name.

Guiding Principle to Support Transgender Students

The Virginia Department of Education continues to be committed to working with school divisions to ensure a positive, safe, and nurturing learning environment for all students. It is important that as education leaders we affirm our commitment to advancing equity in Virginia’s public schools. Efforts to advance equity priorities include developing a culturally competent workforce of educators, closing opportunity and achievement gaps among marginalized student groups, increasing access to high quality early learning opportunities, and maximizing the potential of every Virginia student. The key guiding principle of the model policies is that all children have a right to learn, free from discrimination and harassment.

For many people, their gender identity matches their sex assigned at birth. For others, their gender identity does not necessarily correspond to the sex assigned at birth, where the gender identity may be one in a range such as transgender, nonbinary, or gender-expansive. Gender identity is considered an innate characteristic that most children declare by age five to six (Lamb & Lerner, 2015). In 2020, the American Psychological Association (APA) and National

Association of School Psychologists (NASP) declared in a resolution that “all persons, including children and adolescents who are diverse in their sexuality and gender identities, expression, and/or presentation, have the inherent human right to equal opportunity and a physically and psychologically safe environment within all institutions.” The American Academy of Pediatrics (2018) also acknowledged that, “variations in gender identity and expression are normal aspects of human diversity.”

School divisions are encouraged to develop comprehensive policies, regulations, guidance and implementation plans to minimize social stigmatization for such students and maximize opportunities for social integration so that all students have an equal opportunity to attend school, be engaged, and achieve academic success. This process should be informed by the needs of students, and the strongest policies are developed when they include student participation. A recent study found that inclusive policies that focus on sexual orientation and gender identity were associated with more supportive school environments for LGBTQ+ youth and had a direct association with less truancy (Day, Ioverno, & Russell, 2019). While the terminology *transgender* is used throughout this document, it should be interpreted to include gender-expansive, nonbinary, and gender nonconforming individuals who do not identify on the cisgender binary.

To comply with HB 145 (2020) and SB 161 (2020), local school boards shall adopt policies consistent with model policies contained in this document no later than the 2021-2022 school year. They may adopt more comprehensive policies than these model policies relating to the treatment of transgender students. The goal is to develop policies that are informed by the law and ensure that all students, including transgender students, have safe, supportive, and inclusive school environments. Local school boards should consult with their school board attorney in the development of policies and regulations relating to the treatment of transgender students.

The purpose of this document is to present model policies for use during the local school board’s policy development process. Given the broad range of topics to be addressed by local school boards relating to the treatment of transgender students, it is likely that multiple policies will be needed in different categories rather than a single policy. Existing policies and regulations may also need to be expanded or clarified to be more gender-inclusive or to emphasize specific protections for transgender, nonbinary, and gender-expansive students. This document provides information, best practices, guidance, procedures, and standards for each topic, and model policies are highlighted and distinctive from the discussions. Local school boards may adopt example language in the model policies or use it as a guide to draft policies that meet the unique needs of their school division.

Bullying, Harassment, and Discrimination

Because of societal prejudice and lack of awareness or understanding, transgender students may experience rejection, criticism, or bullying, that affect their emotional health and academic achievement. A 2019 national survey by GLSEN found that 84 percent of transgender youth feel unsafe at school, and those who experience victimization have significantly lower GPAs, are more likely to miss school out of concern for their safety, and are less likely to plan on continuing their education (Kosciw, Clark, Truong, & Zongrone, 2020). Compared to their

cisgender and heterosexual peers, LGBTQ+ youth report much higher rates of depression, anxiety, alcohol and drug use, and lower self-esteem. LGBTQ+ youth of color may experience additional stress and adverse effects as a result of their intersecting identities, facing both bias against their gender identity or expression as well as racism. Research has shown that LGBTQ+ students experience higher levels of victimization because of their gender identity and/or gender expression and have more adverse outcomes compared to their cisgender and heterosexual peers (Human Rights Campaign Foundation, 2018):

- 73 percent of surveyed LGBTQ+ youth have experienced verbal threats because of their actual or perceived LGBTQ+ identity.
- 77 percent of surveyed LGBTQ+ youth report feeling depressed or down over the past week, and more than 70 percent report feelings of worthlessness and hopelessness in the past week.
- 95 percent of surveyed LGBTQ+ youth report trouble sleeping at night.

Furthermore, a recent study found that socially transitioned transgender children who are supported in their gender identity have no elevations in depression and only minimal elevations in anxiety relative to population averages (Olson, Durwood, DeMeules, & McLaughlin, 2016). According to the Office of Civil Rights (OCR), “in cases where a complaint alleges that a school’s action or policy excludes a person from participation in, denies a person the benefits of, or subjects a person to discrimination under an education program or activity, on the basis of sex, the *Bostock* opinion guides OCRs understanding that discrimination against a person based on their status as homosexual or transgender generally involves discrimination on the basis of their biological sex. “(OCR, 2020). For transgender students, acts of verbal harassment may include the intentional and persistent use of names and pronouns not consistent with their identity. Sex-based harassment may also include the disclosure of the student’s gender identity without their consent as this presents safety concerns for the student.

Each local school division should ensure its compliance with all state and federal laws regarding harassment, intimidation, or bullying. Schools should have well-publicized policies prohibiting harassment and procedures for reporting and resolving complaints consistent with *Model Policy to Address Bullying in Virginia’s Public Schools* (VDOE, 2013) and compliant with the *Code of Virginia* § 22.1-276.01, § 22.1-208.01, § 22.1-279.6.D, § 22.1-291.4.

The OCR indicated that discrimination against a person based on their status as transgender generally involves discrimination on the basis of their biological sex (OCR, 2020). Thus, schools have a responsibility to respond to discrimination on the basis of sex, including on the basis of the student’s nonconformance to stereotyped notions of gender. Additionally, President Biden issued an Executive Order that states “Children should be able to learn without worrying about whether they will be denied access to the restroom, the locker room, or school sports...All persons should receive equal treatment under the law, no matter their gender identity or sexual orientation” (Exec. Order No. 13988, 2021).

Schools should provide a safe educational environment for all students and treat all students with dignity and respect, regardless of a student’s sex, sexual orientation, gender identity/expression, or transgender status. Local school boards should expand their policies prohibiting discrimination, harassment, and bullying to emphasize that discrimination or harassment against a student, by either school staff or by other students, on the basis of their gender identity is

prohibited under federal and state laws. Nondiscrimination policy and related complaint procedures should be readily accessible to students and parents/guardians. While there are existing procedures for complaints related to discrimination, harassment, and bullying, school divisions may consider emphasizing steps that a student or parent may take for complaints specifically related to discrimination based on gender identity. For example, a division-level ombudsman or team may be established to hear concerns brought by students, families, and staff when their concerns are not resolved at the school level. This division-level ombudsman or team may also be available to provide consultations to school staff with questions regarding the implementation of the policies. To assist staff in understanding how to provide a safe educational environment for transgender students, refer to considerations for training under the Professional Development and Training section.

The [School Division] prohibits any and all discrimination, harassment, and bullying based on an individual's actual or perceived race, color, national origin, religion, sex, sexual orientation, gender identity, disability, or any other characteristic protected by law.

Any incident or complaint of discrimination, harassment, or bullying shall be given prompt attention, including investigating the incident and taking appropriate corrective action, by the school administrator. Complaints alleging discrimination, harassment, or bullying based on a student's actual or perceived gender identity shall be handled in the same manner as other discrimination or harassment complaints. The [School Division's Designated Contact] shall be available to hear concerns from students and parents when complaints are not resolved at the school level.

Student Privacy/Confidentiality

Many transgender students undergo the process of gender transition to confirm and live as the gender consistent with their gender identity. School divisions are encouraged to communicate openly, albeit confidentially, with students and families regarding the student's gender identity to ensure that appropriate steps are taken to determine a student's needs and address any privacy concerns and associated risks to the student's well-being. Protecting transgender students' privacy is critical to ensuring that they are treated consistent with their gender identity and minimizing the risk of harm to the students.

Regarding student privacy within the school community, a student's gender identity may be public or private, and the degree to which others are aware of the student's gender identity will influence plans to support the student. Given the potential for discrimination, sharing this information could expose a student to harassment and abuse from peers or adults within the school community. School staff should discuss with the student about how they prefer information about their gender identity to be shared. Some students may wish the information to remain private while others may prefer that the gender identity is shared or even discussed in class. If the student is in a setting where they have been known by their assigned sex at birth, options for privacy may be limited. In some situations, the student's move to a new school setting (e.g., starting middle school, transferring to a different school) affords the opportunity to confirm their gender identity with more privacy. Regardless of the circumstances, the school should support the student's need for privacy and safety and not disclose a student's gender identity to other students or other parents. Additionally, school staff should treat a student's

gender identity as being particularly sensitive information that should not be shared even internally among school personnel except to those with a legitimate educational interest or need to know. When a student publicly shares their gender identity, schools should work proactively to set clear boundaries about being gender inclusive and respond to negative reactions from the school community should they arise. Refer to additional discussions in the Other Considerations section regarding the process for school personnel when a student or parent informs the school about the student's gender identity.

Regarding student privacy outside of the school community, a student's gender identity, legal name, or sex assigned at birth may be considered confidential medical information and protected Personally Identifiable Information (PII). Disclosure of that information may violate the school's obligations under the *Family Educational Rights and Privacy Act* (FERPA) and the *Health Insurance Portability and Accountability Act of 1996* (HIPAA). Although school divisions may disclose a student's name and gender as directory information, parents and eligible students have the right to refuse the designation of that information as directory information, pursuant to § 22.1-287.1 of the *Code of Virginia*. Absent an explicit legal obligation, permission, or authorization from the appropriate party, such information should not be shared with anyone, and the local policy should explicitly prevent such disclosures. In order to maintain confidentiality, school divisions may need to consider additional policies related to record keeping. Refer to additional discussions on the separation of confidential information under the Student Records section. Any unauthorized disclosure of protected student information should be addressed according to existing policies and regulations in accordance with FERPA and HIPAA.

Additionally, privacy and confidentiality are critical for transgender students who do not have supportive families. Disclosing a student's gender identity can pose imminent safety risks, such as losing family support or housing. According to a recent study, LGBT youth have a 120 percent increased risk of experiencing homelessness compared to youth who identified as heterosexual and cisgender (Morton, Dworsky, & Samuels, 2017). School divisions will need to consider the health and safety of the student in situations where students may not want their parents to know about their gender identity, and schools should address this on a case-by-case basis. If a student is not ready or able to safely share with their family about their gender identity, this should be respected. There are no regulations requiring school staff to notify a parent or guardian of a student's request to affirm their gender identity, and school staff should work with students to help them share the information with their family when they are ready to do so. Refer to additional discussions regarding when parents are aware of but are not affirming of the student's gender identity in the next section.

All school personnel shall adhere to legal standards of confidentiality relating to information about a student's gender identity, legal name, or sex assigned at birth.

In addition to adhering to all legal standards of confidentiality, school personnel shall treat information relating to a student's gender identity as being particularly sensitive, shall not disclose it to other students and other parents, and shall only disclose to other school personnel with a legitimate educational interest.

Student Identification

For many transgender students, their daily emotional and psychosocial wellness are dependent on receiving support and recognition for their gender identity. A transgender student may adopt a name that is different from their legal name on their birth certificate and use pronouns reflective of their gender identity. Many transgender students will adopt the gender pronouns typically associated with their gender identity. For example, most transgender girls will use she/her/hers pronouns, while most transgender boys will use he/him/his pronouns. There may be a less common pattern of pronoun usage among nonbinary students. Nonbinary students, as well as transgender students, may use gendered pronouns like she/her/hers or he/him/his, use gender-neutral pronouns such as they/them/their or ze/hir/hirs, use multiple sets of pronouns interchangeably, or use their name in place of any pronoun. School divisions should accept a student's assertion of their gender identity without requiring any particular substantiating evidence, including diagnosis, treatment, or legal documents. A student is considered transgender if, at school, the student consistently asserts a gender identity different from the sex assigned at birth. This should involve more than a casual declaration of gender identity, but it does not necessarily require any substantiating evidence nor any required minimum duration of expressed gender identity. Establishing gender identity can present differently from student to student, including, but not limited to: uniform assertion of such an identity, indication that the identity is sincerely held as part of the student's core identity, or that the student is not asserting such an identity for an improper purpose. Schools should work with a student to address any concern that an asserted gender identity may be for an improper purpose, such as permitting the student to respond with information that supports the request to be treated consistent with their gender identity.

When a student asserts that they have a name and/or pronoun affirming their gender identity, school staff should abide by the student's wishes as to how to address the student. All school employees shall treat all students with respect and dignity. In accepting employment with a school district, a school staff member agrees to abide by and uphold their school board's policies and procedures, as well as federal and state laws. A school administrator may need to direct school staff to abide by the wishes of a student on their name and pronoun. A school employee's intentional and persistent refusal to respect a student's name and pronoun is considered discriminatory. Schools also should be prepared for genuinely innocent confusion or uncertainty that may come up from school staff and students. Existing school board policies, including anti-discrimination, harassment, and bullying policies, may need to be adjusted or clarified relating to processes that address when a school staff member fails to comply with the student's request or an administrator's directive to use the name and pronoun consistent with their gender identity.

Schools shall allow students to use a name and gender pronouns that reflect their gender identity without any substantiating evidence. School staff shall, at the request of a student or parent, when using a name or pronoun to address the student, use the name and pronoun that correspond to their gender identity.

In the situation when parents or guardians of a minor student (under 18 years of age) do not agree with the student's request to adopt a new name and pronouns, school divisions will need to determine whether to respect the student's request, abide by the parent's wishes to continue using the student's legal name and sex assigned at birth, or develop an alternative that respects both the student and the parents. This process will require consideration of short-term solutions to address the student's emotional needs to be affirmed at school as well as the long-term goal of

assisting the family in developing solutions in their child's best interest. For example, a plan may include addressing the student at school with their name and pronoun consistent with their gender identity while using the legal name and pronoun associated with the sex assigned at birth when communicating with parents or guardians. Research has shown that transgender youth with supportive families experience a 52 percent decrease in recent suicidal thoughts and 46 percent decrease in suicide attempts (Ryan, Russell, Huebner, Diaz, & Sanchez, 2010) and that "chosen name used in more contexts was associated with lower depression, suicidal ideation, and suicidal behavior" (Russell, Pollitt, Li, & Grossman, 2018). Thus, school staff should be prepared to support the safety and welfare of transgender students when their families are not affirming. School staff should provide information and referral to resources to support the student in coping with the lack of support at home, provide information and resources to families about transgender issues, seek opportunities to foster a better relationship between the student and their family, and provide close follow-ups with the family and student. Refer to Appendix A for resources to support families of transgender students. To comply with § 63.2-1509 of the *Code of Virginia*, whenever school personnel suspects or becomes aware that a student is being abused, neglected, or at risk of abuse or neglect (as defined by § 63.2-100 of the *Code of Virginia*) by their parent due to their transgender identity, they must report those concerns to Child Protective Services immediately. Before making a decision on policies relating to situations when parents or guardians are not accepting of the student's gender identity, school divisions should consult their school board attorney.

School Records

Schools' student information systems typically use the student's legal name and sex assigned at birth as reflected on their birth certificate, required at the time of school registration (§ 22.1-3.1 of the *Code of Virginia*), and some documents attached to student records may require the use of the legal name and sex assigned at birth. Information in the student information systems is then used for a variety of documents and processes such as a unique student identification number needed for proper student accounting (i.e., for purposes of funding and accountability indicators), communication with parents, class rosters, attendance records, student identification cards, library cards, standardized tests, year books, and school photos. Not all transgender students update legal documents to align with their new name and gender, but they may wish to use the name and gender consistent with their gender identity in their school documents and processes. Record keeping that does not include the legal name and sex assigned at birth as well as the name and gender consistent with the gender identity may pose risks of inadvertently disclosing the student's gender identity as well as cause potential emotional trauma for a transgender student.

School divisions should develop solutions to support a transgender student's wishes for privacy. For example, schools could consider maintaining the student's legal name and sex assigned at birth as sensitive information in their student information system that requires additional privilege to access. The student information system can then separately include the name and gender consistent with the gender identity as additional information that is used to the greatest extent possible to populate school-related documents and are available to other users. The protection of the student's legal name and gender as sensitive information would prevent a student's gender identity from being disclosed, such as by a substitute teacher. In situations

where school divisions are required to use or to report a transgender student's legal name or sex assigned at birth, such as for purposes of standardized testing or student data reporting to the VDOE, school staff should adopt practices to avoid the inadvertent disclosure of such information. Additionally, schools should eliminate gender markers from their forms, documents, and records when feasible. While the topic of transgender students usually focuses on transgender males or transgender females, there are students who identify as nonbinary or gender-expansive. Since the concept of gender is increasingly being viewed as a gender spectrum, it may be beneficial to remove gender from forms and documents or provide a broader, more inclusive range of options. For purposes of data collection, the VDOE has expanded gender choices to include nonbinary as a third option if the student or parent wishes to use this option.

When a student or parent requests to change the student's name or gender on school records, the extent to which records are modified will depend on the type of record and the substantiation of the change. Local school boards may need to revise or clarify current policies relating to the process to change any element of a student's record, including the appeals process for decisions made regarding a change to the student's record.

School divisions will also need to consider policies relating to records for former students. When a student transitions after they are no longer enrolled in the school division, they may request amendments to school records reflecting a new name and gender that are different from those during their attendance. Former students may want to ensure that information on their records such as transcripts and standardized test scores are consistent with information they are submitting such as those on college or job applications. School divisions could consider respecting a former student's request to amend records retroactively and may consider processing those requests in the same way other student record amendment requests are processed. If a former student obtains a court order changing their name or amend other legal documents such as their birth certificate, state-or federal-issued identifications, or passports, school divisions, when requested, should amend the student's record, including reissuing a high school diploma or transcript, to reflect the student's current name and gender. Before making a decision on policies relating to changes to school records, transcripts, and diplomas, school divisions should consult their school board attorney.

[School Division] is required to maintain a record that includes a student's legal name and sex assigned at birth and may be required to use or report the legal name and sex assigned at birth in some situations. In situations where school staff is required to use or to report a transgender student's legal name or sex assigned at birth, such as for purposes of standardized testing, school staff and administrators should adopt practices to avoid the inadvertent disclosure of such information.

Upon the request of a student or parent, schools shall use the name and gender consistent with the student's gender identity on other school records or documents.

Schools shall change a student's name and gender designation upon verification or submission of a legal document such as a birth certificate, state- or federal-issued identifications, passport, or court order. Records of former students may also be re-issued with the submission of legal documents substantiating the amended name and gender.

Dress Code

Local school board policies regarding dress code should serve to support equitable educational access for all students. The goal of dress or grooming codes should be to ensure the health and safety of students and not contribute to a hostile or intimidating atmosphere for any student. Dress codes, including hairstyles, should encompass broad guidelines that are not gender-specific and free of gender stereotypes. For example, gender-inclusive language such as “clothing must be worn in a way such that genitals, buttocks, and nipples are covered with opaque material” should be used rather than prohibiting certain types of clothing typically associated with one gender (e.g., “a mini skirt” or “camisole”). Transgender students have the right to dress in a manner consistent with their gender identity or gender expression, and any student has the right to expression free from gender expectations, as long as the student's attire complies with the school's dress code. Dress codes should be written, enforced, and applied consistently and equally to all students regardless of gender. In addition, § 22.1-279.6 of the *Code of Virginia* permits any school board to include in its code of student conduct a dress or grooming code. For school divisions who do include dress and grooming standards for students, the amendment explicitly states that any dress or grooming code shall “maintain gender neutrality by subjecting any student to the same set of rules and standards regardless of gender;...not have a disparate impact on students of a particular gender.”

School divisions should further examine and eliminate provisions for gender-specific attire relating to school activities and events such as physical education uniforms, school ceremony attires, gender-specific graduation gowns, band uniforms, or orchestra uniforms when these provisions are not necessary for educational purposes. For example, schools may require formal attire for all students at a choral concert but should not specify that girls must wear dresses and boys must wear ties.

Dress and grooming codes shall be written relating to the attire or articles of attire without limits on gender expectations. Students have a right to dress in a manner consistent with their gender identity or gender expression. Schools shall administer and enforce dress and grooming codes consistently across the student body, regardless of actual or perceived gender identity or gender expression.

Requirements for attire for school-related programs, activities, and events shall be gender-neutral.

Access to Activities and Facilities

Student Participation in School Activities and Events

In general, school divisions should make efforts to eliminate gender-based practices to the extent possible. Gender-based policies, rules, and practices can have the effect of marginalizing, stigmatizing, and excluding students, regardless of their gender identity or gender expression. Examples of practices that may be based on gender include grouping students for class activities, gender-based homecoming or prom courts, limitations on who can attend as “couples” at school dances, and gender-based events such as father-daughter dances. School divisions should review any gender-based policies, rules, and practices to determine whether they serve a legitimate educational goal or otherwise non-discriminatory purpose. School activities and practices should be gender-neutral and avoid dividing students by gender in the absence of an educational purpose. Any single-gender activity or program should not be premised on generalizations or stereotypes about the different talents, capacities, or preferences of any gender. For example, the composition of choruses should be gender-inclusive and based only on vocal range or quality requirements.

Whenever schools provide gender-specific activities such as physical education classes, students should be allowed to participate in a manner consistent with their gender identity. Students have the right to equitable access to programs, activities, and events that include but are not limited to acknowledgements, dances, assemblies, after-school programs, extracurricular activities, intramurals, non-competitive sports leagues, and field trips. For overnight field trips, the school should not force the student into single-occupancy accommodations that are not required for other students; however, such alternative accommodations should be made available to any student requesting them. It is important that school divisions adopt policies and procedures that are focused on the safety of all students and seek to address privacy interests in situations involving individuals undressing or showering. School divisions should ensure that all students who participate in extracurricular activities that involve overnight trips are aware of the school’s policies and options available to them in advance.

HB 145 and SB 161 exclude athletics for purposes of developing local school board policies. School divisions should follow rules and policies for interscholastic athletic participation as outlined by those athletic organizations. The Virginia High School League (VHSL) has provided policies regarding the participation in gender-specific sports team by transgender students (VHSL, 2020).

Schools shall eliminate the practice of segregating students by gender to the extent possible.

For any school program, event, or activity, including extra-curricular activities that are segregated by gender, [School Division] shall allow students to participate in a manner consistent with their gender identity.

Athletic participation regulated by the Virginia High School League (VHSL) or another organization such as the Virginia Scholastic Rowing Association (VASRA), as well as middle school athletics, shall be in compliance with policies and rules outlined by those organizations.

Access to Facilities

All students are entitled to have access to restrooms, locker rooms, and changing facilities that are sanitary, safe, and adequate, so that they can comfortably and fully engage in their school programs and activities. Schools frequently maintain separate restrooms, locker rooms or other facilities for males and females. Students should be allowed to use the facility that corresponds to their gender identity. While some transgender students will want that access, others may want alternatives that afford more privacy. Taking into account existing school facilities, administrators should take steps to designate gender-inclusive or single-user restrooms commensurate with the size of the school. When schools have available gender-inclusive or single-user restrooms or private changing areas, these restrooms or areas should be accessible to all students without special codes or keys. This would allow for any students seeking privacy to access single-user restrooms and private changing areas voluntarily. For locker room facilities without private changing areas, school divisions should make reasonable accommodations for requests for increased privacy. At the request of any student, schools should offer alternative arrangements such as a separate changing schedule, use of a nearby private area, access to a staff member's office, not requiring students to dress in uniform for physical education, or offering alternatives to in-person physical education. Any accommodations offered should be non-stigmatizing and minimize lost instructional time. Also, note that any information related to accommodations should be handled in such a way as to protect the student's privacy relating to their gender identity.

It can be emotionally harmful for a transgender student to be questioned regarding the use of restrooms and facilities. School staff should not confront students about their gender identity upon entry into the restroom. Furthermore, as school divisions plan for new school facilities or renovations, they should consider generally accommodating students who want more privacy such as designing additional single-user or gender-inclusive restrooms or changing areas. Additionally, § 22.1-6.1 of the *Code of Virginia* requires each school board to make menstrual supplies available at all times and at no cost to students in accessible locations in each elementary school and in the bathrooms of each middle and high school. Accordingly, these supplies should be made available in all bathrooms to be gender-inclusive.

Access to facilities such as restrooms and locker rooms that correspond to a student's gender identity shall be available to all students.

Upon request, single-user or gender-inclusive facilities or other reasonable alternatives shall be made available to any student who seeks privacy. Any options offered shall be non-stigmatizing and minimize lost instructional time.

Professional Development and Training

In order to promote a positive school climate where all students feel safe and supported, school divisions should incorporate regular education about transgender students into staff professional development and training. Periodic professional development should be provided to school mental health professionals (SMHPs), such as school-based counselors, psychologists, and social workers. SMHPs play a critical role in addressing the mental well-being of students that may have an impact on their academic performance. Thus, they are key personnel in addressing challenges that transgender students may face in their schools. Yet, in a recent national survey (GLSEN, 2019), 80 percent of SMHPs received little to no competency training in their graduate programs related to working with transgender populations, and 37 percent had not received any formal education or training on LGBTQ+-specific student issues during their professional careers. When they receive competency training and continuing education and training activities related to LGBTQ+ students, SMHPs feel more confident and engage in more efforts to support LGBTQ+ students directly and to address overall school climate. In addition to SMHPs, school divisions should provide training to all school staff, including but not limited to custodial staff, administrative support staff, substitute teachers, school nurses, and bus drivers. Any staff with opportunities to interact with students should have some familiarity with how to support LGBTQ+ students and would benefit from training that fosters a safe and supportive school climate.

The goal of professional development for all staff is to ensure that they understand the rights of all students to a safe learning environment and the local school board's expectations regarding the treatment of transgender students. Additionally, professional development should include culturally affirming, accessible LGBTQ+ competency training. It is recommended that training provided to school staff cover the following components:

- Key LGBTQ+ terminology and the use of unbiased language to promote equality and justice for LGBTQ+ students.
- Challenges and barriers frequently faced by LGBTQ+ students. This should heighten awareness of the implicit bias and discrimination that transgender students may encounter and identify the need for a gender-inclusive school.
- Federal and state laws and local school board policies and regulations relating to the rights of all students to a safe learning environment. This should include expectations relating to preventing, identifying, and responding to bullying and harassment of transgender students. Another area to address is the student's rights to privacy and how unauthorized disclosures to peers, parents, school staff, and other third parties may negatively impact the student's safety and well-being.

- Practices to create a safe, inclusive environment for all students. This should include strategies to promote understanding and foster positive relationships between LGBTQ+ students and their peers and the school community and steps to affirm LGBTQ+ students.
- Knowledge of LGBTQ+ affirming resources for students and families.
- Strategies to engage parents and other stakeholders regarding an inclusive school community that affirms LGBTQ+ students.

These components may overlap with or intersect other professional development topics such as bullying prevention, mental health awareness and suicide prevention, equity, positive school climate, or trauma-sensitive practices. Local school divisions should coordinate the various professional development activities for consistency. Topics relating to LGBTQ+ students, including safety and support for LGBTQ+ students, can be interwoven with other topics or as a distinct topic in training opportunities. Additionally, to ensure effective training, school divisions should use evidence-based curricula or consult with experts for the development and delivery of LGBTQ+ cultural competency training. The inclusion of content experts, including those with lived experiences, in the training may be vital in developing allies for LGBTQ+ students. Refer to Appendix A for resources related to professional development and training.

All school mental health professionals shall be trained annually on topics relating to LGBTQ+ students, including safety and support for LGBTQ+ students.

Other Considerations

Students and staff each have their own unique religious and personal experiences, views, and opinions. Local school boards have an opportunity to lead discussions on issues of gender identity. It will be important to engage communities regarding policies, regulations, and procedures to ensure equal access to education. Involving appropriate community members should help to reconcile sometimes deeply conflicting community views. For example, engaging students and parents will be critical in developing policies and procedures relating to student privacy and addressing situations where parents are not affirming their child's gender identity. Additionally, local school boards may need to review agreements and processes with community partners for any activities taking place on school grounds to ensure consistency in practices. For example, local school boards may consider the applicability of policies relating to dress code and access to activities and events for programs such as Junior Reserve Officers Training Corps (JROTC) or community youth athletic leagues who use school facilities. While the conversation is not easy, local school boards and school staff will need to provide clear guidance on the implementation of these policies and reduce their exposure to legal liability.

In order for the policies to be effective, local school boards should consider developing detailed guidelines and processes for the implementation of these policies. For example, to ensure consistency across the division, guidelines for the implementation of policies should include processes to update student classroom records and other school records with the student's name and, if necessary, appropriate gender marker that are consistent with their gender identity. Such a process will require clear procedures and coordination across the school division by all personnel with responsibilities related to student information and records, including but not limited to registrars, technology support personnel managing student information systems, administrative support personnel, and test administrators. Additionally, processes, including forms or templates,

should be developed to support students or parents requesting a name and gender change and requesting an action plan to support the student's transition. School divisions are recommended to establish and designate a point-of-contact or team of knowledgeable and affirming staff members to support transgender students. When a student informs the school about their transition or requests a change to their name and gender, it is recommended that a point-of-contact, or a multi-disciplinary school team if needed, meet with the student (and parents/guardians if the parents/guardians are affirming of the student's gender identity) to develop a plan to accommodate the student's needs and requests. A template may be helpful to develop a plan that includes areas to be addressed such as names and pronouns, privacy concerns, communication plans, student information and records, access to facilities and activities, and other considerations.

In addition to policies that address the areas discussed above, local school boards should consider developing additional policies, regulations, or guidelines that foster an inclusive school climate. For example, school divisions may consider ensuring LGBTQ+-inclusive curricula. According to GLSEN, schools with LGBTQ+-inclusive and affirming curricula have students who have less-hostile school experiences, increased feelings of connectedness to the school community, better academic and mental health outcomes, and are less likely to miss school (GLSEN, 2019). School divisions may take an inclusive approach by incorporating educational content that is transgender affirming into the general education curriculum, such as history, literature, and science. For example, material may feature or include transgender people or highlight the contributions of LGBTQ+ people in state and US history curricula. School divisions should also initiate efforts to curate an inclusive library collection. As with many curricular choices, school divisions should involve key stakeholders in making those decisions. School divisions will need to consider additional actions if they wish to include material related to gender identities in Family Life Education (FLE). Per the *Code of Virginia* § 22.1-207.2, parents and guardians have the right to review the Family Life Education (FLE) curriculum. Additionally, in the *Code of Virginia* § 22.1-207.1, parents and legal guardians have the right to excuse their child from all or part of FLE instruction.

To further foster positive, inclusive school climates, school divisions should promote activities and LGBTQ+-affirming resources for students and families. For example, schools should support the formation of student clubs or programs regarding issues related to LGBTQ+ youth such as Gay-Straight Alliances or Gender & Sexuality Alliances (GSAs), ensuring that these are equally easy to establish in relation to other student clubs or programs. Besides professional development for school staff, students may also benefit from training on an inclusive school environment. This may be in the form of peer-led education groups, educational material on student rights and training on self-advocacy skills, learning assemblies, or training of student leaders. Other affirming activities include the promotion of visible supports for LGBTQ+ youth such as the use of flags and stickers and the sharing of affirming community resources. Examples of resources for students are provided in Appendix A.

Appendix A: Resources

Resources for School Divisions

American Psychological Association (APA) [LGBT Youth Resources](#)

APA [Promoting Resiliency for Gender Students Diverse and Sexual Minority in Schools](#)

APA [Supporting Transgender and Gender Diverse Students in Schools: Key Recommendations for School Administrators](#)

Gender Spectrum [Gender Inclusive Schools Toolkit](#)

GLSEN [Safe Space Kit](#)

Gender Spectrum [Schools in Transition: A Guide for Supporting Transgender Students in K-12 Schools](#)

Midwest Symposium for Leadership in Behavior Disorders [LGBTQ 101](#)

National School Board Association [Transgender Students in Schools: Frequently Asked Questions and Answers for Public School Boards and Staff](#)

National Black Justice Coalition [Words Matter Gender Justice Toolkit](#)

SAMHSA [A Practitioner's Resource Guide: Helping Families to Support Their LGBT Children](#)

Teaching Tolerance [Classroom Resources](#)

US Department of HHS and National Center on Parent, Family and Community Engagement [Healthy Gender Development and Young Children: A Guide for Early Childhood Programs and Professionals](#)

Virginia School Boards Association (VSBA) [Council of School Attorneys \(COSA\) Welcoming Schools](#)

Model and Existing Policies and Guidelines

Arlington Public Schools [APS School Board Policy Information: Transgender & Gender Non-Conforming Students, Policy Implementation Procedures: Transgender Students in Schools, Transgender Students in Schools - Guidelines and Implementation Plan](#)

Boulder Valley School District [Guidelines Regarding the Support of Students and Staff Who Are Transgender and/or Gender Nonconforming](#)

California Safe Schools Coalition [Model School District Policy Regarding Transgender and Gender Nonconforming Students](#)

Connecticut State Department of Education [Guidance on Civil Rights Protections and Supports for Transgender Students Frequently Asked Questions](#)

GLSEN [Model Local Education Agency Policy on Transgender and Nonbinary Students](#)

Madison Metropolitan School District [Guidance & Policies to Support Transgender, Non-Binary, and Gender-Expansive Students](#)

Massachusetts Department of Elementary and Secondary Education [Guidance for Massachusetts Public Schools Creating a Safe and Supportive School Environment: Nondiscrimination on the Basis of Gender Identity](#)

Montgomery County Public Schools [Guidelines for Students: Gender Identity](#)

Oregon NOW [Model Student Dress Code](#)

State of New Jersey Department of Education [Transgender Guidance for School Districts](#)

US Department of Education [Examples of Policies and Emerging Practices for Supporting Transgender Students](#)

Virginia High School League (VHSL) [Virginia High School League Handbook and Policy Manual 2020-2021](#)

Professional Development Resources

American Counseling Association [LGBTQ-Affirmative Counseling Competencies](#) (in partnership with Human Rights Campaign)

Garden State Equality [Professional Development Workshops](#)

GLSEN [Professional Development](#)

Rainstorms to Rainbows (LGBTQ+ Consulting and Counseling)

Side-by-Side Trainings

Teaching Tolerance (Gender & Sexual Identity Webinars)

The Safe Zone Project (Awareness and Ally Training Workshops)

Welcoming Schools [Professional Development](#)

Resources for Students

Campus Pride

Centers for Disease Control and Prevention [LGBTQ Youth Resources](#)

Human Rights Campaign [Transgender Resources](#)

[It Gets Better Project](#)

Harvard Law School LGBTQ+ Advocacy Clinic and NCLR [Trans Youth Handbook: Helping You Learn About Your Legal Rights in Different Areas of Your Life](#)

[Transgender Assistance Program of Virginia](#)

[The Trevor Project](#)

UVA [Teen & Young Adult Transgender Clinic](#)

Virginia Department of Health (VDH) [Virginia Transgender Resource and Referral List](#)

VDH [Resources for LGBTQ Youth](#)

Resources for Parents

Child Welfare Information Gateway [Resources for Families of LGBTQ Youth](#)

[Helping Families Support Their LGBT Children](#)

Movement Advancement Project [Family Support: Resources for Families of Transgender & Gender Diverse Children](#)

[PFLAG](#)

San Francisco State University [The Family Acceptance Project](#)

San Francisco State University [Supportive Families, Healthy Children: Helping Families with LGBT Children](#)

[Trans Youth Family Allies Resources for Parents](#)

Welcoming Schools [Transgender and Non-Binary Children: Books to Help Adults Understand](#)

Advocacy Organizations

[Equality Virginia](#)

[Gender Spectrum](#)

GLSEN [Richmond Chapter](#)

GLSEN [Northern Virginia Chapter](#)

[He She Ze and We](#)

[National Black Justice Coalition](#)

National Center for Transgender Equality Youth & Student Issues
Shenandoah LGBTQ Center

Side by Side

Trans-Latinx DMV

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Publication Information

Questions or inquiries about this document should be directed to:

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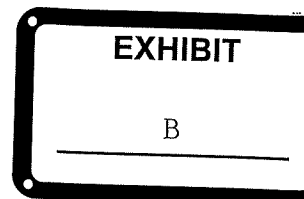
(804) 225-2071

The Hanover County School Board met at the School Board Office in Ashland, Virginia on Tuesday, November 9, 2021.

Present:

Ola J. Hawkins, Chair
Robert L. Hundley, Jr., Vice Chair
John F. Axselle III
Sterling H. Daniel
Steven Ikenberry
Robert J. May
George E. Sutton

Michael B. Gill, Superintendent of Schools
Kathleen M. Brown, School Board Clerk
Amanda A. Baker, Assistant Superintendent for Human Resources
Jennifer Greif, Assistant Superintendent for Instructional Leadership
Christina P. Berta, Assistant Superintendent for Business and Operations
Chris R. Whitley, Assistant Superintendent of Community Engagement & Legislative Affairs
Lisa A. Seward, Deputy County Attorney
Leah Han, Assistant County Attorney



The meeting was called to order at 6:00 PM.

On a motion by Mr. Hundley, seconded by Mr. Daniel and carried unanimously [Axselle (Aye), Daniel (Aye), Hawkins (Aye), Hundley (Aye), Ikenberry (Aye), May (Aye), Sutton (Aye)], the Board amended the agenda to add agenda items I.1. to express support for the payment of bonuses to Hanover County Public School employees; D.1. to include the November 4, 2021, minutes of the Special Board Meeting for approval; and to closed session Code of Virginia, Section 2.2-3711(A)(7) Consultation with legal counsel pertaining to actual or probable litigation.

CLOSED MEETING

On a motion by Mr. Sutton, seconded by Mr. Axselle and unanimously carried, [Axselle (Aye), Daniel (Aye), Hawkins (Aye), Hundley (Aye), Ikenberry (Aye), May (Aye), Sutton (Aye)] the Board entered into a closed meeting in accordance with Code of Virginia, Section 2.2-3711(A)(1) Personnel; Review Recommendations of the Superintendent for Resignations, Appointments, Transfers, Assignments, Promotions, Terminations, Salary Adjustments and Leaves for Teachers and Other Employees; Section 2.2-3711(A)(2) Consideration of Request for Religious Exemption from Compulsory School Attendance; and Section 2.2-3711(A)(7) Consultation with Legal Counsel Pertaining to Actual or Probable Litigation.

OPEN SESSION

On a motion by Mr. Axselle, seconded by Mr. Ikenberry and unanimously carried, [Axselle (Aye), Daniel (Aye), Hawkins (Aye), Hundley (Aye), Ikenberry (Aye), May (Aye), Sutton (Aye)] the Board returned to open session at 7:00 PM.

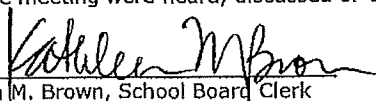
CERTIFICATION OF CLOSED MEETING

On a motion by Mr. Hundley, seconded by Mr. Daniel and unanimously carried, [Axselle (Aye), Daniel (Aye), Hawkins (Aye), Hundley (Aye), Ikenberry (Aye), May (Aye), Sutton (Aye)] the School Board certified the following:

WHEREAS, the Hanover County School Board has convened closed meeting on this date pursuant to an affirmative recorded vote and in accordance with the provisions of the Virginia Freedom of Information Act; and

WHEREAS, Section 2.2-3712(D) of the Code of Virginia requires a certification by this School Board that such executive meeting was conducted in conformity with Virginia law;

NOW, THEREFORE, BE IT RESOLVED that the Hanover County School Board hereby certifies that, to the best of each member's knowledge, (i) only public business matters lawfully exempted from open meeting requirements by Virginia law were discussed in the executive meeting to which this certification applies, and (ii) only such public business matters as were identified in the motion convening the executive meeting were heard, discussed or considered.


Kathleen M. Brown, School Board Clerk
November 9, 2021

A moment of silence was held for the recent passings of Eva-Maria Ahladas, a teacher at Henry Clay ES, and Brian Kapros, a student at Patrick Henry HS. Mr. Hundley gave the Invocation. Christian Berry, a student at Patrick Henry HS, led the Pledge of Allegiance.

APPROVAL OF MINUTES

On a motion by Mr. Sutton, seconded by Mr. Hundley and unanimously carried, [Axselle (Aye), Daniel (Aye), Hawkins (Aye), Hundley (Aye), Ikenberry (Aye), May (Aye), Sutton (Aye)], the Board approved the minutes for the regular meeting held on October 12, 2021 and (per the amended agenda), the special meeting held on November 4, 2021. [Axselle (Aye), Daniel (Aye), Hawkins (Aye), Hundley (Aye), Ikenberry (Aye), May (Aye), Sutton (Aye)]

RECOGNITION & ANNOUNCEMENTS

The Board recognized Charlotte Embrey, teacher at Patrick Henry HS, as the recipient of James Madison University's Department of Chemistry 2021 High School Teacher of the Year. Also recognized was Brian Capaldo, TV99 instructor, and the 2020-2021 TV99 interns as first place winners in the Virginia High School League broadcast journalism news competition. All graduates of the class of 2020, interns

included the following: Ruthie Weeks, Atlee HS; Paris Dailey, Hanover HS; Kirsten McCarty, Hanover HS; Mason Johnson, Mechanicsville HS; Addy Klinger, Patrick Henry HS; and Diego Alleyne, Patrick Henry HS.

Board members did not have any announcements to make at this time.

CONSENT AGENDA

Approval was sought for the following item(s) discussed in and governed by closed session requirements (if applicable):

A. Approval of Superintendent's Recommendations for Resignations, Appointments, Transfers, Assignments, Promotions, Terminations, Salary Adjustments and Leaves as reflected in the November 9, 2021 Personnel Agenda and November 9, 2021 Personnel Addendum

B. Approval of Request for Religious Exemption from Compulsory School Attendance

On a motion by Mr. May, seconded by Mr. Daniel and unanimously carried, the Board approved the items on the consent agenda. [Axselle (Aye), Daniel (Aye), Hawkins (Aye), Hundley (Aye), Ikenberry (Aye), May (Aye), Sutton (Aye)]

PUBLIC COMMENT

Mr. Hundley stated that the public comment period will be limited to 60 minutes. Some names called upon this evening may have already spoken at the November 4th special meeting. Also, those who were unable to speak at the October meeting due to time constraints will have the opportunity to speak this evening, if present.

The following were not present: Michelle Puckett, Hunter Young, Aleisha Miles, Mindy Ruggiero, Pat Jordan, Hadassah Hubbard Carter, Chloe Foster, Mari Dyer, Jay Engle, Gavin Grimin, Gillian Hayes, Terra Laurence, Keith Hennett, Angie Parker.

Katie Topham, Henry, expressed concern about the monitoring of bathrooms if the proposed policy revisions are implemented. Long-term data for the COVID-19 vaccine in children is unknown; do not put children at risk by requiring this vaccination to attend school.

Kimberly Thurston, Mechanicsville, urged the Board to oppose the proposed policy revisions; there is already an anti-harassment policy in place. School Board meetings should be held elsewhere; there is not enough space for attendees.

James Gallagher, Chickahominy, stated that proposed policy 7-1.2 is flawed. He provided his letter of intent to sue the School Board if the policy is adopted.

Jody McMaster, Mechanicsville, advocated for a delayed vote until the Board is better prepared with a solution and shamed any administrator who may doubt a child who claims to have been raped.

Mark Kyllingstad, Chickahominy, expressed concern about high school parking fees and curriculum called "Teen Talk."

Danielle Floyd, Chickahominy, urged the Board to vote against the proposed policy revisions, find a solution that accommodates all students, and install gender-neutral bathrooms.

Arthur Brill, Beaverdam, stated that bathrooms everywhere are not safe. He suggested that the new Gandy ES be an opportunity to design a new vision for restrooms.

Sabrina Civils, Cold Harbor, stated that if approved, the proposed policy would do more harm than good, benefiting 11 students out of 16,000 students.

Dottie Walsh, Ashland, discussed bullying and a free program to promote kindness in schools.

Becky Hendricks, Chickahominy, read an excerpt from the book *The Watchmaker*, noting that knowledge can be a heavy load for children to carry. She advocated to protect the innocence of all students.

William Halle, Henry, advocated for gender-neutral bathrooms because a policy should not change to benefit such a small population.

Wayne Floyd, Chickahominy, advocated for gender-neutral bathrooms and a delayed vote to find a reasonable solution.

Jean Grieshaber, Ashland, stated that providing bathrooms for everyone is a blatantly obvious solution.

Edyta Olex, Ashland, stated that more safety measures are needed for bathrooms. Transgender students should not have to worry about using bathrooms.

Johnny Davis, Ashland, reminded the Board that they are sworn to uphold the code and laws of the Commonwealth and encouraged the adoption of recommended language from the VSBA in terms of a general discrimination policy and not specifically address the politicized topic of transgender students.

Kim Simpson, Cold Harbor, stated that the Board is not ready to vote because no one can agree what the policy should be. She requested that the Board revise the policy to please the entire community.

Cassie Kell, Cold Harbor, stated it is parents' responsibility to teach about transgenderism to their children at the appropriate time; it is a biological fact that male or female is assigned at conception.

Sarah Via, Cold Harbor, urged the Board to delay a vote.

Jessica Parker Zdinak, Montpelier, believes that additional research needs to be done before a vote is called.

Faith Cavalli, Henry, is not comfortable with boys using the girls' bathroom and advocated for a third bathroom to be installed at schools.

Per Board Policy 1-6.8, Public Comment was closed at 60 minutes. Speakers who were unable to address the Board at this meeting may have the opportunity to do so at the next regular meeting.

INSTRUCTIONAL HIGHLIGHT

Michael Mudd, Director of Elementary Education, provided an overview of the literacy support provided in Title I elementary schools. Highlights included the roles of literacy staff, interventions being used, and how data is used to improve students' reading growth.

ACTION ITEMS

Support for the Payment of Bonuses to Employees of Hanover County Public Schools

At its November 18, 2020 meeting, the Hanover County Board of Supervisors authorized a public hearing to amend the Hanover County Code to add a Section numbered 2-5 related to the payment of bonuses to Hanover County officers and employees, employees of the Hanover County Public Schools, and qualifying employees of the Constitutional Officers for Hanover County (Ord. No. 20-14, § 1, 12-9-20). This section allows the payment of monetary bonuses to county employees and officers, employees of Hanover County Public Schools and qualifying employees of the Constitutional Officers for Hanover County. The payment of bonuses shall be subject to criteria outlined in policies adopted by the board or be paid at the direction of the board. Hanover County School Board supports the payment of bonuses to Hanover County Public Schools employees subject to criteria outlined in policies adopted by and paid at the direction of the Board of Supervisors. The Board of Supervisors, at their next scheduled meeting, November 10, 2021, intends to consider the approval of a bonus for Hanover County officers and employees, as well as the employees of the Hanover County Public Schools and Hanover's Constitutional Officers in alignment with the policy.

On a motion by Mr. Hundley, seconded by Mr. Ikenberry and unanimously carried, [Axselle (Aye), Daniel (Aye), Hawkins (Aye), Hundley (Aye), Ikenberry (Aye), May (Aye), Sutton (Aye)], the Board expressed its support for payment of bonuses to the employees of Hanover County Public Schools subject to criteria outlined in policies adopted by and paid at the direction of the Board of Supervisors.

Approval of Proposed Policy Revisions

On a motion by Mr. Axselle, seconded by Mr. Hundley and carried unanimously [Axselle (Aye), Daniel (Aye), Hawkins (Aye), Hundley (Aye), Ikenberry (Aye), May (Aye), Sutton (Aye)], the Board adopted the proposed revisions to Policy 6-1.10 Teaching about Sensitive or Controversial Topics.

Mr. Hundley moved to adopt the proposed revisions to Policy 7-1.2 Equal Educational Opportunities. There was no second to the motion and therefore no vote was taken. Revisions to the policy did not pass.

On a motion by Mr. Hundley, seconded by Mr. Daniel and carried unanimously [Axselle (Aye), Daniel (Aye), Hawkins (Aye), Hundley (Aye), Ikenberry (Aye), May (Aye), Sutton (Aye)], the Board adopted the proposed revisions to Policy 7-1.4 Student Records.

Approval of New Course Recommendations

On a motion by Mr. Axselle, seconded by Mr. Hundley and carried unanimously [Axselle (Aye), Daniel (Aye), Hawkins (Aye), Hundley (Aye), Ikenberry (Aye), May (Aye), Sutton (Aye)], the Board approved the proposed new courses PA 76: Profile of a Hanover Graduate (PHG) Capstone Seminar and PA 77: Profile of a Hanover Graduate (PHG) Capstone Seminar (with Internship) as presented.

To gain further clarification on the earlier motion that did not receive a second, the Board discussed the status of the proposed revisions to Policy 7-1.2 Equal Educational Opportunities. Per legal counsel, the policy is not "dead" until a motion passes to *not* adopt the policy revisions. Discussion included the importance of addressing the item so that the community understands the status of this divisive issue; the opportunity to continue working on revisions as the current version does not meet what the majority of the community appears to want; the need for safety concerns to be addressed; and background information explaining why these revised policies were being presented.

Mr. May moved to disapprove the proposed revisions to Policy 7-1.2 Equal Educational Opportunities. Mr. Ikenberry seconded. A roll call vote was taken. [Axselle (Aye), Daniel (Nay), Hundley (Nay), Ikenberry (Aye), May (Aye), Sutton (Aye), Hawkins (Nay)]. The motion carried (4-3). The proposed revisions to Policy 7-1.2 Equal Educational Opportunities were not approved.

INFORMATION/DISCUSSION ITEMS

Review of Proposed 2022 Legislative Agenda

Each year, the Hanover County School Board adopts a legislative program to reflect the perspectives and positions of the School Board on legislative issues of importance to the Hanover County Public Schools. The program contains the School Board's positions on state and federal legislative matters that could or do have a major impact on public education in Hanover County. The draft legislative agenda has been developed in consultation with representative members of the School Board and was presented for first review.

Capital Planning Study

Hanover County Public Schools is engaging with RRMM to evaluate the projected capital needs for the next 25 years. RRMM completed a study in 2018, evaluating nine of the school divisions buildings at that time. During this capital planning study, RRMM will be updating the information included in the 2018 report and providing additional information on the remaining 17 school facilities. This information will be incorporated into the Capital Improvement Plan in the FY2023 budget development process. The county is also performing an evaluation of the county facilities, which will allow for comprehensive discussions across all entities. The total cost to complete this study is \$73,570.

Review of Proposed Policy Revisions

The proposed revisions for Policy 7-5.5 Administration of Medicines to Students are the result of House Bill 2019, from the General Assembly's 2021 Special Session I, which amended several sections of the Code of Virginia regarding the administration of medication to students. These changes resulted in the requirement that schools maintain albuterol inhalers and valved holding chambers for administration by trained individuals to students in need. These changes have a delayed effective date of January 1, 2022.

MATERIALS FOR BOARD REVIEW

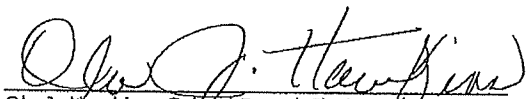
- Fiscal status report
- Facility use report
- Calendar of Board related events

SCHEDULE OF TOPICS FOR NEXT BOARD MEETING

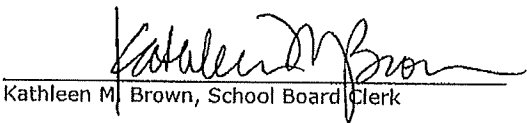
- Adoption of 2022 Legislative Agenda
- Approval of proposed revisions for Policy 7-5.5 Administration of Medicines to Students
- Student enrollment data

ADJOURNMENT

On a motion by Mr. Sutton, seconded by Mr. Hundley and unanimously carried, [Axelle (Aye), Daniel (Aye), Hawkins (Aye), Hundley (Aye), Ikenberry (Aye), May (Aye), Sutton (Aye), the meeting was adjourned at 9:11 PM.



Ola J. Hawkins, School Board Chair



Kathleen M. Brown, School Board Clerk

POLICY 7-1.2 EQUAL EDUCATIONAL OPPORTUNITIES

The Hanover County 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, national origin, disability, sex, sexual orientation, gender identity, ethnicity, ancestry, marital or parental status, or on any other basis prohibited by law. Further, no student shall, on the basis of gender, be excluded from participating in, be denied the benefits of, be limited in the exercise of any right, privilege or advantage, or be subjected to discrimination under any educational program or activity conducted by the school division. 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: (i) provides facilities, programs and activities that are accessible, usable and available to qualified persons with disabilities; (ii) provides a free, appropriate education, including non-academic and extracurricular services to qualified persons with disabilities; (iii) does not exclude qualified persons with disabilities, solely on the basis of their disabilities, from any preschool, daycare, adult education or vocational programs; and (iv) does not discriminate against qualified persons with disabilities in the provision of health, welfare or social services.

If a student expresses a gender identity that differs from the student's official education records, the student may contact the school counselor assigned to the student for

additional support. Once the school has been notified of the student's assertion of a gender identity different from that which was recorded at birth, and with the consent of the student's parent or legal guardian, the student may utilize single user restroom facilities, which are open to all students, or the restroom and locker room assigned to the student's expressed gender identity. Hanover County Public Schools' staff will collaborate with the student and family to ensure that the student is treated with respect and dignity and has access to a safe and supportive learning environment in accordance with state and federal law.

With the exception of secondary athletics, Hanover County Public Schools will avoid the practice of segregating students by gender in situations where there is no legitimate educational purpose. When a gender-specific course is offered or a course with a gender-specific section, transgender students are allowed to enroll in the course corresponding with their gender identity. In courses where specific units are taught in a way that divides students into groups by gender, students are permitted to participate in a manner consistent with the student's gender identity.

Secondary athletics adhere to the rules of Virginia High School League (VHSL). Junior Reserve Officers' Training Corps (JROTC) courses are regulated by the applicable military commands and will be conducted in compliance with the policies and rules outlined by those military commands.

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

Harassment based on sex consists of unwelcome sexual advances, requests for sexual favors, or 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. 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.

Examples of conduct which may constitute harassment based on race, national origin, disability or religion if it meets the immediately preceding definition include:

- graffiti containing racially offensive language;
- name calling, jokes, or rumors;
- physical acts of aggression against a person or their property because of that person's race, national origin, disability, or religion;
- hostile acts which are based on another's race, national origin, religion, or disability;
- written or graphic material which is posted or circulated and which intimidates or threatens individuals based on their race, national origin, disability, or religion.

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 via email.

Complaint Procedures

Any employee or 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 to 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 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

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.

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 five 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.

The 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.

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 shall be 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.

LEGAL REFERENCE: Code of Virginia, 1950, as amended, §§ 2.2-3900, 2.2-3901, 2.2-3902; 22.1-23.2; Civil Rights Act of 1964, as amended; Title IX of the Education Amendments of 1972 (P.L. 92-318), as amended (P.L. 93-568 and P.L. 94-482); 34 C.F.R. §§ 100.6-100.11; 34 C.F.R. 101.1-101.131, 34 C.F.R. 106.1-106.7; 45 C.F.R., Parts 81, 86; Americans with Disabilities Act, 1990; § 504 of the Rehabilitation Act of 1973.

Recodified August 2000

Amended: August 11, 2015

ACCOMPANYING REGULATIONS

REGULATION 7-1.2(A) REPORT OF DISCRIMINATION, BULLYING OR HARASSMENT

Report of Discrimination, Bullying Or Harassment Form

REGULATION 7-1.2(B): GRIEVANCE PROCEDURE FOR DISCRIMINATION ON THE BASIS OF GENDER, HANDICAP OR DISABILITY

Application

Students enrolled in Hanover County Public Schools may seek resolution of grievances resulting from alleged discrimination on the basis of gender, handicap or disability in accordance with this regulation.

Procedures

1. The complainant shall file a written complaint with the Title IX or Section 504 Coordinator not later than 30 days from the date of the alleged discrimination. The coordinator or his representative will attempt to adjust the grievance and

will notify the complainant within 10 days of the filing of the written complaint. The coordinator will meet with the complainant within the 10-day period if the complainant requests such a meeting in his complaint.

2. If the Title IX or Section 504 Coordinator does not resolve the grievance to the complainant's satisfaction within the specified time period, the complainant may file a written complaint with the division superintendent within 5 days of receipt of the coordinator's decision (or the due date thereof). The division superintendent shall notify the complainant of his decision within 10 days of the date the complainant filed the complaint with the division superintendent. The division superintendent or his designee will meet with the complainant within the 10-day period if the complainant requests such a meeting in his complaint filed with the division superintendent.
3. If the division superintendent does not resolve the grievance to the complainant's satisfaction within the specified time period, the complainant may file a written complaint with the School Board within 5 days of the receipt of the division superintendent's decision (or the due date thereof). The complainant may request a hearing by the School Board, which request must be filed with the complaint. A hearing will be conducted as described in paragraph 4 below. The School Board shall consider the grievance within 30 days of the date the complainant filed the complaint with the School Board. The School Board shall give the complainant at least 15 days written notice of the date, place and time of its consideration of the grievance. The School Board shall notify the complainant in writing of its decision within 30 days of its consideration of the complaint.
4. If the complainant requests a hearing before the School Board, the following procedure shall be followed:
 - a. The complainant, and the division superintendent acting in the capacity of respondent, may be represented by legal counsel or other representatives.

b. All parties must, before the hearing date, exchange any written materials to be used during the hearing with each other and provide copies to the School Board. Such materials must be distributed within 3 business days before the hearing, or at such later time as the materials first become available to the party using them.

c. Each party may make an opening statement and present all material and relevant evidence, including the testimony of witnesses.

d. The School Board may question witnesses.

e. A stenographic or tape recording of the hearing shall be taken unless dispensed with by agreement of all parties. All parties shall share the cost of the recording equally; a party who requests a transcript shall bear the cost of its preparation.

Miscellaneous

1. A document required to be filed under this regulation shall be deemed filed, and any notice required to be given under this regulation shall be deemed given, when personally delivered to the appropriate person or entity, or when sent by certified mail, return receipt requested.
2. The complaint and all actions taken in response to the complaint shall be kept confidential by those acting on behalf of the school division.
3. If any person with whom the complainant is required to file a complaint is the complainant or the source of the complaint, or if there is a conflict of interest, the complainant is not required to file the complaint with that person but may proceed with the next step in the procedure.
4. All complaints filed in accordance with this regulation shall be prepared on a standard form supplied by the Title IX or Section 504 Coordinator, attached as Regulation 7-1.2 (A).

5. Any action permitted to be taken by the complainant may be taken by the complainant's representative.

Amended: August 11, 2015

POLICY 7-1.4 STUDENT RECORDS

The Hanover County School Board maintains accurate and complete individual, permanent and cumulative records for every student enrolled in public schools. These records include cumulative and confidential information and are the student's official school record. Such records, 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, are maintained in compliance with Federal and State law.

The superintendent or his/her designee(s) is 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 superintendent also provides for notification of all school 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 this policy.

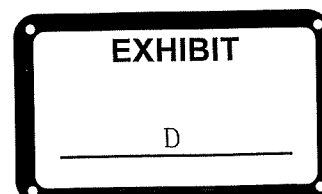
Hanover County Public Schools provides a copy of this Policy on request to a parent or eligible student.

Definitions

As used in this Policy, the following definitions apply:

Authorized Representative – any entity or individual designated by a state or local educational authority or an agency headed by an official listed in 34 C.F.R. §99.31(a)(3) to conduct, with respect to federal- or state-supported education programs, any audit or evaluation, or any compliance or enforcement activity in connection with federal legal requirements that related to these programs.

Directory Information – information contained in a student's education record that would not generally be considered harmful or an invasion of privacy if disclosed.



Directory information may include information such as the student's name, sex, address, telephone listing, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height as a member of an athletic team, dates of attendance, degrees and awards received, and other similar information, provided that the school has given notice to the parent or eligible student of (i) the types of information that the school has designated as directory information; (ii) the right of the parent or eligible student to refuse the designation of any or all of the types of information about the student as directory information, and (iii) the period of time within which the parent or eligible student must notify the school in writing that he does not want any or all of the types of information about the student designated as director information. Directory information may not include the student's social security number.

Early childhood education program – a Head Start program or an Early Head Start program, a state licensed or regulated child care program, or a program that serves children from birth through age six that addresses the children's cognitive, social, emotional, and physical development and is a state prekindergarten program, a program under § 619 of the Individuals with Disabilities Education Act, or a program operated by a local educational agency.

Education program – any program that is principally engaged in the provision of education, including, but not limited to early childhood education, elementary and secondary education, postsecondary education, special education, job training, career and technical education, and adult education, and any program that is administered by an education agency or institution.

Education records - any record (in handwriting, print, computer media, video or audio tape, film, microfilm, microfiche or other medium) maintained by Hanover County Public Schools or an agent of the school division which is directly related to a student, *except*:

1. A record kept in the sole possession of the maker, is used only as a personal memory aid, and is not accessible or revealed to another person except a temporary substitute for the maker of the record.

2. Records created and maintained for law enforcement purposes by the Hanover County Public Schools law enforcement unit, if any. A law enforcement unit is an individual, department or office of the school division that is authorized to enforce any state or federal law, report enforcement matters to appropriate authorities or maintain the physical security and safety of the school division.
3. In the case of persons who are employed by the Hanover County School Board, but who are not in attendance at a school in the division, records made and maintained in the normal course of business which relate exclusively to the person in his or her capacity as an employee.
4. Records created or received by Hanover County Public Schools after the individual is no longer a student in attendance and which do not directly relate to the individual's attendance as a student.
5. Grades on peer-graded papers before they are collected and recorded by a teacher.

Eligible student - a student or former student who has reached age 18, or a student who is emancipated.

Parent - a parent of a student, including a natural parent, a guardian, or an individual acting as a parent in the absence of a parent or guardian.

Student - any person who attends or has attended a school in the school division regarding whom the school division maintains education records or personally identifiable information.

Dissemination and Maintenance of Records about Court Proceedings

Adjudications

The superintendent will disseminate the notice or information regarding an adjudication of delinquency or conviction for an offense listed in § 16.1-260(G) of the Code of Virginia, contained in a notice received pursuant to § 16.1-305.1 of the Code of

Virginia, 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 will 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.

A parent, guardian, or other person having control or charge of a student and, with consent of a parent or in compliance with a court order, the court in which the disposition was rendered, will be notified in writing of any disciplinary action taken with regard to any incident upon which the adjudication of delinquency or conviction for an offense listed in §16.1-260(G) was based and the reasons therefor. The parent or guardian will also be notified of his or her right to review, and to request an amendment of, the student's education record.

Every notice of adjudication of delinquency or conviction for an offense listed in §16.1-260(G) received by the division superintendent and information in the notice which is not a disciplinary record, as defined in Board of Education regulations will be maintained by the division superintendent and other school personnel separately from all other records concerning such student. However, if the school administration or School Board takes disciplinary action against a student based on an incident which formed the basis for the adjudication of delinquency or conviction for an offense listed in §16.1-260(G), the notice will become a part of the student's record.

Any notice of disposition received pursuant to § 16.1-305.1 will not be retained after the student has been awarded a diploma or a certificate as provided in § 22.1-253.13:4 of the Code of Virginia.

Petitions and Reports

The superintendent will not disclose information contained in or derived from a notice of petition received pursuant to Code of Virginia § 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 so notify the intake officer of the juvenile court in which the petition was filed and may forward the notice of petition to the 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.
4. If the division superintendent believes that disclosure of information regarding a report received pursuant to Virginia Code § 66-25.2:1 to school personnel is necessary to ensure the physical safety of the student, or other students, or school personnel, he may disclose the information to the principal of the school in which the student is enrolled. The principal may further disseminate the information regarding such report only to school personnel as necessary to protect the student, the subject or subjects of the danger, other students, or school personnel.

Protective Orders and Orders Prohibiting Contact with a Student

Any school principal who receives notice that a circuit court, general district court, juvenile and domestic relations district court, or magistrate has issued a protective order for the protection of any student who is enrolled at the school, or any other order prohibiting contact with such a student, will notify licensed instructional personnel and

other school personnel who (i) provide direct educational or support services to the protected student or the student subject to the order, (ii) have a legitimate educational interest in such information, and (iii) are responsible for the direct supervision of the protected student or the student subject to the order, that such order has been issued.

Annual Notification

The school division annually notifies parents and eligible students of their rights under the Family Educational Rights and Privacy Act (FERPA) at the beginning of each academic year, including:

1. the right to consent to disclosures of personally identifiable information contained in the student's education records, except to the extent that FERPA authorizes disclosure without consent;
2. the right to inspect and review the student's education records and the procedure for exercising this right;
3. the right to request amendment of the student's education records that the parent or eligible student believes to be inaccurate, misleading or in violation of the student's privacy rights and the procedure for exercising this right;
4. the type of information designated as directory information and the right to opt out of release of directory information;
5. the right of parents and eligible students to obtain, upon request, a copy of the school division's written policies and procedures on the management of the education records and the location of these records; and,
6. that the school division releases records to other institutions that have requested the records and in which the student seeks or intends to enroll or is already enrolled so long as the disclosure is for purposes related to the student's enrollment or transfer.

7. the right to opt out of the release of the student's name, address, and phone number to military recruiters or institutions of higher education that request such information;
8. a specification of the criteria for determining who constitutes a school official and what constitutes a legitimate educational interest; and
9. the right to file complaints with the Family Policy Compliance Office in the United States Department of Education concerning the school division's alleged failure to comply with FERPA.

Procedure to Inspect Education Records

Parents of students or eligible students may inspect and review the student's education records within a reasonable period of time 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. Parents or eligible students should submit to the student's school principal a written request which identifies as precisely as possible the record or records he or she wishes to inspect.

When appointed by the court in a pending guardianship or conservatorship proceeding, a guardian ad litem may inspect and review the respondent student's information, records and reports as necessary to complete his or her duties pursuant to Va. Code § 64.2-2003.

The principal (or appropriate school official) will make the needed arrangements for access as promptly as possible and notify the parents, eligible students or guardian ad litem of the time and place where the records may be inspected. Access must be given no later than 5 work days from the receipt of the request, unless it is not practically possible to provide the records or determine whether they are available within the 5 work-day period. In that case, the school shall respond in writing within the 5-work-day period, specifying why it cannot respond within 5 work days. The school shall then have an additional 7 work days in which to respond to 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.

Fees for Copies of Records

The fee for copies will be \$.25 per page. The actual cost of copying time and postage will be charged. Hanover County Public Schools will not charge for search and retrieval of the records. Hanover County Public Schools will not charge a fee for copying an Individualized Education Program (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

Hanover County Public Schools will provide parents, on request, a list of the types and locations of education records collected, maintained, or used by the school division.

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 will use informal means to secure the consent. If the parent continues to refuse to consent, the school division will 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.

Hanover County 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.
- d. A contractor, consultant, volunteer, or other party to whom the school division has outsourced services or functions for which the school division would otherwise use employees and who is under the direct control of the school division with respect to the use and maintenance of education records.

A school official has a "legitimate educational interest" if the official is:

- a. Performing a task that is specified in his position description or by a contract agreement.
- b. Performing a task related to a student's education.
- c. Performing a task related to the discipline of a student.
- d. 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, school system, or institution of postsecondary education where, a student seeks or intends to enroll or is already enrolled so long as the disclosure is for purposes related to the student's enrollment or transfer. Hanover County Public Schools will 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 United States Attorney General, the Comptroller General, and state educational authorities, in connection with

certain state or federally supported education programs and in accordance with applicable federal regulations.

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. For the purpose of furthering the ability of the juvenile justice system to effectively serve the student prior to adjudication. The principal or his designee may disclose identifying information from a student's scholastic record to 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 duties; an officer or employee of a county or city agency responsible for protective services to children, as to a student referred to that agency as a minor requiring investigation or supervision by that agency; attorneys for the Commonwealth, court services 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 student or by such student if the student is eighteen years of age or older.

6. To organizations conducting certain studies, for or on behalf of, educational agencies or institutions to develop, validate or administer predictive tests; administer student aid programs; or improve instruction. The studies must be conducted in a manner that does not permit personal identification of parents and students by individuals other than representatives of the organization that have legitimate interests in the information. The information must be destroyed when it is no longer needed for the purposes for which the study was conducted. The School Board must enter into a written agreement with the organization conducting the student which:

- specifies the purpose, scope, and duration of the study or studies and the information to be disclosed;
- requires the organization to use personally identifiable information from education records only to meet the purpose or purposes of the study stated in the written agreement;
- requires the organization to conduct the study in a manner that does not permit personal identification of parents and students by anyone other than representatives of the organization with legitimate interests;
and
- requires the organization to destroy all personally identifiable information when the information is no longer needed for the purposes for which the study was conducted and specifies the time period in which the information must be destroyed.

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 connection with an emergency if knowledge of the information is necessary to protect the health or safety of the student or other individuals. If the school division releases information in connection with an emergency, it will record the following information:

- the articulable and significant threat to the health or safety of a student or other individuals that formed the basis for the disclosure; and
- the parties to whom the division disclosed the information.

11. To an agency caseworker or other representative of a state or local child welfare agency or tribal organization who has the right to access a student's case plan when such agency or organization is legally responsible for the care and protection of the student.

12. Directory information so designated by the school division.

13. When the disclosure concerns sex offenders and other individuals required to register under 42 U.S.C. § 14071, and the information was provided to the school division under 42 U.S.C. § 14071 and applicable federal guidelines.

The school division will use reasonable methods to identify and authenticate the identity of parents, students, school officials, and any other parties to whom it discloses personally identifiable information from education records.

Hanover County Public Schools is required to maintain a record that includes a student's legal name and sex recorded at birth and may be required to use or report that information in some situations. When school staff is required to use or report a transgender student's legal name or sex recorded at birth, such as for purposes of standardized testing, school staff should avoid the inadvertent disclosure of such information.

Upon request of a student and parent, school staff will use the name and gender consistent with the student's gender identity on other school records or documents.

All school personnel will adhere to legal standards of confidentiality relating to information about a student's gender identity, legal name or sex recorded at birth. Disclosure of such information may only be made to other school personnel with a legitimate educational interest.

Unauthorized Disclosure of Electronic Records

In cases in which electronic records containing personally identifiable information are reasonably believed to have been disclosed in violation of federal or state law applicable to such information, the school division will notify, as soon as practicable, the parent of

any student affected by such disclosure, except as otherwise provided in Virginia Code §§ 32.1-127.1:05 or 18.2-186.6. Such notification will include the (i) date, estimated date, or date 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.

Disclosure to Federal Agencies

Notwithstanding any other provision of law or policy, no member or employee of the School Board will transmit personally identifiable information, as that term is defined in FERPA and related regulations, from a student's record to a federal government agency or an authorized representative of such agency except as required by federal law or regulation.

Disclosure of Information Relating to Home Instructed Students

Neither the superintendent nor the School Board will disclose to the Department of Education or any other person or entity outside the school division information that is provided by a parent or student to satisfy the requirements of Virginia Code § 22.1-254(B)(1). However, the superintendent or School Board may disclose, with the written consent of a student's parent, such information to the extent provided by the parent's consent. Nothing in this policy prohibits the superintendent from notifying the Superintendent of Public Instruction of the number of students in the school division receiving home instruction.

Audit or Evaluation of Education Programs

Authorized representatives of the Comptroller General of the United States, the Attorney General of the United States, the federal Secretary of Education, and state and local educational authorities may have access to education records in connection with an audit or evaluation of federal- or state-supported education programs, or for the enforcement of or compliance with federal legal requirements that relate to those programs.

Any authorized representative other than an employee must be designated by a written agreement which

- Designates the individual or entity as an authorized representative;
- Specifies the personally identifiable information to be disclosed, specifies that the purposes for which the personally identifiable information is disclosed to the authorized representative is to carry out an audit or evaluation of federal- or state-supported education programs, or to enforce or comply with federal legal requirements that relate to those programs; and specifies a description of the activity with sufficient specificity to make clear that the work falls within the exception of 34 C.F.R. § 99.31(a)(3), including a description of how the personally identifiable information will be used;
- Requires the authorized representative to destroy personally identifiable information when the information is no longer needed for the purpose specified;
- Specifies the time period in which the information must be destroyed; and
- Establishes policies and procedures, consistent with FERPA and other federal and state confidentiality and privacy provisions, to protect personally identifiable information from further disclosure and unauthorized use, including limiting use of personally identifiable information to only authorized representatives with legitimate interests in the audit or evaluation of a federal- or state-supported education program or for compliance or enforcement of federal legal requirements related to such programs.

Military Recruiters and Institutions of Higher Learning

Hanover County Public Schools will provide, on request made by military recruiters or an institution of higher education, access to secondary school students' names, addresses, and telephone listings.

A secondary school student or the parent of the student may request that the student's name, address, and telephone listing not be released without prior written parental consent.

The school division will notify parents of the option to make a request and will comply with any request. The school division will provide military recruiters the same access to secondary school students as is provided generally to post-secondary educational institutions or to prospective employers of those students.

Record of Requests for Disclosure

Hanover County Public Schools will maintain a record, kept with the education records of each student, indicating all individuals (except school officials who have a legitimate educational interest in the records), agencies, or organizations which request or obtain access to a student's education records. 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 assistants 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 for disclosure stated above do not apply to disclosures 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 division will not permit access to information from education records to that third party for a period of at least five years.

Directory Information

Hanover County Public Schools notifies 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 notify the school division, in writing, that he or she does not want any or all of those types of information designated as directory information.

No school discloses the address, telephone number, or email address of a student pursuant to the Virginia Freedom of Information Act unless the parent or eligible student affirmatively consents in writing to such disclosure. Except as required by state or federal law, no school discloses 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 Virginia law and this policy or (b) the parent or eligible student has affirmatively consented in writing to such disclosure.

Parents and eligible students may not use the right to opt out of directory information disclosures to 1) prevent disclosure of the student's name, identifier or institutional email address in a class in which the student is enrolled; or 2) prevent the school division from requiring the student to wear, to display publicly or to disclose a student ID card or badge that exhibits information designated as directory information and that has been properly designated as directory information.

Correction of Education Records

The procedures for the amendment of records that a parent or eligible student believes to be inaccurate are as follows:

1. Parents or the eligible student must request in writing that Hanover County 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. Upon request of a parent or legal guardian, Hanover County Public Schools will change a student's name and gender designation on official records upon receipt and verification of appropriate legal documents, such as a birth certificate, passport, or court order. Former students who have reached the age of majority may also seek amendment under this process in order to receive reissued official records reflecting the requested change.
3. Hanover County Public Schools will decide whether to amend the record in accordance with the request within a reasonable period of time. If it decides not to comply, the school division will 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.
4. Upon request, the school division will 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 will be held within a reasonable period of time after the request.
5. The parent or eligible student may, at his or her own expense, be assisted or represented by one or more individuals of his or her own choice including an attorney.
6. The hearing will be conducted by a hearing officer who is a disinterested party; however, the hearing officer may be an official of the school division. The parents or eligible student will 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.
7. Hanover County Public Schools will prepare a written decision which will include a summary of the evidence presented and the reasons for the decision within a reasonable period of time after the hearing. The decision will be based solely on the evidence presented at the hearing.

8. If Hanover County Public Schools decides that the challenged information is not inaccurate, 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 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 and disclosed whenever the school division discloses the portion of the record to which the statement relates.
9. If Hanover County Public Schools decides that the information is inaccurate, misleading, or in violation of the student's right of privacy, it will amend (including expungement) the record and notify the parents or eligible student, in writing, that the record has been amended.
10. Hanover County Public Schools shall will 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 complies 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 maintains confidentiality of drug and alcohol treatment records as required by federal and state law.

LEGAL REFERENCE: Code of Virginia, 1950, as amended, §§ 2.2-3704, 2.2-3705.4, 2.2-3804, 16.1-260, 16.1-305.1, 16.1- 305.2, 22.1-23.3, 22.1-254.1, 22.1-279.3:2, 22.1-287, 22.1-287.01, 22.1-287.02, 22.1-287.1, 22.1-288, 22.1-288.1, 22.1-288.2, 22.1-289, 32.1-36.1, 64.2-2003; 18 U.S.C. §§ 2331, 2332b; 20 U.S.C. §§ 1232(g); ; 20 U.S.C. § 7908.; 42 U.S.C. § 290dd-2; 34 C.F.R. Part 99.

Recodified August 2000

Amended: July 16, 2003; August 4, 2009; August 14, 2018

ACCOMPANYING REGULATIONS

REGULATION 7-1.4 (A): STUDENT RECORDS

Transfer of Student Records

A school responding to a request for the transfer of the scholastic records from another school division need not provide written notice of the transfer of the record, 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 eighteen years of age or older, if the school has previously included in its annual notice a statement that it forwards such records to such requesting school divisions.

All personnel authorized access to student records shall be informed of these regulations. Strict adherence shall be a condition of employment by the Hanover County School Board.

Definitions

Student Records

The scholastic record shall be limited to data needed by the school to assist the student in his personal, social, educational, and vocational development and placement and be maintained in accordance with Regulations Governing Management of the Student's Scholastic Record in the Public Schools of Virginia.

Federal and state laws/regulations require the maintenance of confidentiality with reference to certain items in scholastic records. Virginia has elected to identify confidential information and file all cumulative data as follows: An Education Record shall be developed for every student including information regarding differentiated programs and/or special services, such as gifted, disabled, disciplinary information and court disposition records, etc.

Individual Notification

All parents and students shall be informed of their rights relative to the student's scholastic record. Parents and eligible students shall have an opportunity for a hearing before the principal to challenge the content of their child's records to ensure that the records are not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student and to provide an opportunity for the correction or deletion of inaccurate, misleading, or inappropriate information therein and for the insertion of a written explanation of the parents respecting the content of the records.

All agencies of the Hanover Central Agency Referral Services shall receive annually copies of policies and regulations relating to management of student records.

Directory Information

The categories below are directory information and may be disclosed by the school if the parent has not filed a non-disclosure request. Parents have fifteen (15) administrative working days from the receipt of annual written and public notice to notify Hanover County Public Schools in writing that any part of or all of said directory information about their child shall not be released without prior consent. Directory information consists of 1) name of student in attendance or no longer in attendance including a student's age, gender, and date(s) of attendance; 2) participation in officially recognized activities and sports including a student's academic field of study; 3) height and weight, if member of athletic team; 4) awards and honors or degrees received by a student; 5) yearbook photographs; 6) the name, address, and telephone number of students may be released to military recruiters as permitted by law; 7) the name, address, and telephone number of students may be released to institutions of higher learning as permitted by law, and 8) names, addresses and honors received may be released to members of the Virginia General Assembly on request for the purposes of congratulatory communication only.

Publication of Student Records Policy

It shall be the division superintendent's responsibility to ensure that each school principal reports annually and on request to parents and students over eighteen years of age the following rights concerning student records:

1. To know the types and location of scholastic records that are kept;
2. To know the title and address of the official in charge of the records, the parties to whom data may be disclosed, and the purpose for disclosure;
3. To know the policies for reviewing and expunging scholastic records;
4. To know the policy and procedures for disclosure of data from scholastic records;
5. To challenge a record claimed to be false or misleading, and to a fair hearing if, after review, no change is made; to place a statement of rebuttal in the challenged record if no change is made; to file a complaint with FERPA (Family Educational Rights and Privacy Act) office of the United States Department of Education if they believe any of these rights (20 U.S.C. 1232g) are violated.
6. To receive a copy of the record at a reasonable cost as annually specified in the Parent/Student Handbook, not to exceed the cost of reproduction (search and retrieval fees shall not be charged). Such fee shall not effectively prevent the parents or their designee from exercising their right to inspect and review these records. There is no charge for IEPs. No search fee is charged for any special education records.
7. To know which data are designated as directory information;
8. To receive a response to a reasonable request for explanation and interpretation;
9. To provide the right to inspect and review the education record relating to their children without unnecessary delay and before any meeting regarding an IEP or hearing involving identification, evaluation, or placement;
10. To provide the right to have a representative of the parent inspect and review the education record;
11. To provide the right to inspect and review only information pertaining to their child should the LEA maintain education records on more than one child;

12. To obtain, upon request, a copy of the school division's written policy and procedures on the management of the scholastic records and the location of same.

Collection of Data

Data in Student's Education Record

- a. Family background data other than the name and address of parent or guardian (for example, ethnic origin, religious beliefs, income and occupational data, husband-wife relationships and the like) shall be obtained only by individual consent unless specifically authorized by state and/or federal statutes and regulations.
- b. Standardized tests designed to measure aptitude, achievement, habits/skills and vocational interests shall become a part of each student's academic record.
- c. Additional data shall include but need not be limited to disciplinary records of the student and required reports of evaluations of exceptional students (i.e., gifted, disabled, etc.) when such reports are necessary for placement/special services for such student. This shall also include reports for children with disabilities who have not yet become students (i.e., preschool or unserved).
- d. Court disposition records shall be included following specific procedures for receipt, dissemination, maintenance and retention specified in Code of Virginia §§16.1-305.1, 22.1-288.2, 22.1-289.

Court Disposition Records - Receipt of the Notice, Virginia Code §16.1-305.1

The Virginia Code requires that when a juvenile is adjudicated delinquent or convicted of certain crimes, the clerk of the court must provide written notice of the disposition ordered by the court to the division superintendent of the school division in which the child is enrolled at the time of the disposition or, if he is not then enrolled in school, the division in which he was enrolled at the time of the offense. This notice must be sent within fifteen (15) days of the disposition if an appeal has not been filed. Further disclosure of this information by the division superintendent to the school personnel is

authorized only as provided in §22.1-288.2. Notices of disposition will be sent to superintendents when a student is convicted or adjudicated delinquent of one of the following crimes:

1. the unlawful purchase, possession or use of a weapon;
2. homicide;
3. felonious assault and bodily wounding;
4. criminal sexual assault;
5. manufacture, sale, gift, distribution or possession of Schedule I or II controlled substances;
6. manufacture, sale or distribution of marijuana;
7. arson and related crimes; or
8. burglary.

Dissemination, Virginia Code §22.1-288.2

The Code requires that the division superintendent disseminate the notice or information contained in the notice 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, only:

1. if the student poses a danger to himself or others; or
2. to facilitate the student's appropriate educational placement or other educational services.

If disciplinary action is taken by the school division in regard to the incident upon which the adjudication or conviction was based, the school division must provide written notice to the parent, guardian or other person having control or charge of the student of the disciplinary action and the reason it was taken. 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 action. In addition, the parent or guardian must be notified of his or her right to review and to request amendment of the student's education record.

Maintenance, Virginia Code §§22.1-288.2, 22.1-289

If school administrators or the School Board takes disciplinary action against a student based upon an incident which formed the basis for the adjudication or conviction, the court notice must become a part of the student's disciplinary record.

If the school division does not take disciplinary action, the notice and information contained therein must be maintained separate from all other records concerning the student. Further, if the notice refers to an incident which did not occur on school property or during a school-sponsored activity, it does not become part of the student's education record.

Retention, Virginia Code §22.1 - 289

Any notice of disposition shall not be retained after the student has been awarded a diploma or certificate.

Maintenance/Disposition of Data

1. Data shall be maintained and disposed of in accordance with Regulations Governing Management of the Student's Scholastic Record in the Public Schools of Virginia and the Hanover County Public Schools Records Manual. Any other data not included in this provision is destroyed five years after the student withdraws or graduates.
2. Parents or eligible students have the right to be provided with copies of any of the student's education record data prior to their destruction, upon written request.

3. No scheduled school records shall be destroyed without the authorization of the division superintendent or designated records manager on appropriate forms developed by the Virginia State Library and Archives.

Access and Administration of Security

Each principal, or a designated professional, shall be responsible for student records content, maintenance, access, security, use and disclosure. All personnel having access to student records shall receive periodic training applicable in federal and state laws, regulations and policies and procedures for management of education records, and in security with emphasis upon privacy rights of students and parents. Student records are to be kept in a secure location in the individual school building in which the student is enrolled.

The principal of each school (see Parent-Student Handbook for address) is responsible for the records maintained within his school. Access to pupil records is limited to those persons as specified in the Virginia Code § 22.1-287 (see P 7-29), including: adult clerical personnel; eligible student; parent; principal or designee of the school the student attends, has attended, or intends to enroll; professional personnel (within school or school division); federal, state and local officials as authorized by law; and others who have the written permission of parent or eligible student. A current listing of names and positions of employees within the school division who have access to student education records is available for inspection on request to the Assistant Superintendent of Human Resources. Both natural parents, regardless of custody status, have the right of access to all student records in the absence of a court or medical order to the contrary.

Eligible persons seeking access to cumulative records should notify the principal of the school attended by the student. Access will be arranged by the principal within five work days from the receipt of the request. Arrangements will be made for a staff member to be present to interpret the data if necessary. Parents who wish to have records released to specified individuals should request and authorize the release in writing.

Dissemination of Information Regarding Students

1. Directory Information - See School Board Policy 7-1.4 and definitions section, above.
2. Except in compliance with a judicial order or orders of administrative agencies where these agencies have the power of subpoena, the custodian of student records shall not release information gathered by a non-school agency.
3. When a student reaches the age of eighteen and no longer is attending Hanover County Public Schools, or is married (whether age eighteen or not), his consent alone must be obtained. This includes the right to deny parental access to his records.

Without prior written consent, student education record information shall be disclosed to school personnel, to appropriate persons in an emergency, for audits or approved research where personally identifiable information is excluded, to protective services personnel, or when requested if a student transfers to another school or post-secondary education. When the student record is transferred by request from another school division, the school 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 eighteen years of age or older within **five (5)** calendar days of the date in which the record was transferred.

The school shall transfer a student's record to the Department of Correctional Education when the division superintendent was notified that a student within the school division was enrolled in an education program in a learning center. This requirement also specifically applies to students who are in education programs in jails and detention centers. The Department of Correctional Education must notify the division superintendent when a student has been released from a learning center and transfer the student's education record to the school division within **five (5)** days of a request from the division superintendent or his designee. A record must be kept of all persons, agencies or organizations outside the school division requesting access to a student's

record. The record must indicate the legitimate interest of the person making the request and whether or not it was granted.

Challenges to Records or Portions of Records

Eligible students and/or parents have a right to challenge records or portions of records which they believe to be incorrect. The right of challenge does not mean that any record so challenged must be changed or removed by school administrators. When such a challenge is not resolved to the complainant's satisfaction and a formal hearing is requested, the School Board shall conduct a review and or a hearing as described in Policy 7-1.4.

Transfer of Scholastic Records

Within the School Division

The record shall follow the student from school to school in order to show a pattern in the student's development.

Outside the School Division

When a student transfers to another school division or post-secondary education, a transcript of ~~his~~the student's record, to include academic achievement, standardized test data, cumulative health-physical fitness record, medical records, other pertinent information, etc., where appropriate, shall be sent promptly, upon request, to the appropriate official of the school in which ~~he~~the student seeks or intends to enroll. The school transferring the data shall, prior to the transfer, notify the parent or eligible student of such a transfer and shall provide ~~him~~the student with a copy of the record, if desired.

Amended: June 10, 2003

REGULATION 7-1.4 (B): ACCESS AND DISCLOSURE OF STUDENT RECORDS TO OTHER AGENCIES

Access and Disclosure

Consent to Exchange Information

The Uniform Consent to Exchange Information Form as issued by the Virginia Department of Education shall be used for all interagency cooperation in providing services to students, particularly in the exchange of information about students.

Generally

1. Information shall be exchanged by the listed agencies only to the extent needed for the purpose indicated on the consent form as signed by the parent.
2. The parent may withdraw consent at any time by telling the referring agency. Agencies shall not share information after they know consent has been withdrawn.
3. Agencies listed on the consent form may accept a copy of the form as a valid consent to share information.
4. Agencies listed on the form shall keep a written record each time information is shared. This record shall include which information was shared with other agencies, when it was shared, who asked for and got information, and for what purpose.
5. The parent has the right to ask the listed agencies to review the record.
6. The listed agencies are not required to inform the parent each time they share information about the student.

Procedures for Using the Form Under Part H of the Individuals with Disabilities Act

1. For a student referred to the Hanover Central Agency Referral Services, the temporary service coordinator shall obtain parental permission on the Uniform Consent to Exchange Information Form.

2. Instructions included on the form shall be explained to parents. The entire form shall be completed and parents shall be given a copy of the form.
3. A copy of Parental Rights shall be given to each parent. All parents shall sign the documentation sheet indicating that they received a copy of their Parental Rights.
4. The form shall be reviewed each time information is requested by another agency to ensure that only information for which the parent has signed a release is shared. Each agency request shall be filed in the student's education record with documentation of action taken.

Procedures for Using the Form By the Community Policy and Management Team, Family Assessment and Planning Team, and Interagency Prescription Team

1. For a student being referred to the Hanover County Interagency Family Assessment and Planning Team (FAPT), the referring agency shall obtain parental permission on the Uniform Consent to Exchange Information Form. Permission shall be obtained prior to referral to the FAPT Coordinator.
2. Instructions included on the form shall be explained to parents. The entire form shall be completed and parents shall be given a copy of the form.
3. The original form shall be maintained by the agency designated as case manager. Copies of the form may be maintained by each participating agency.
4. The form shall be reviewed each time the student's case comes before the Interagency FAPT to ensure that only information for which the parent has signed a release is shared and to ensure that the release has not expired. A record of the initial staffing and each follow-up shall be filed in the student's Education Record with documentation of action taken and agencies present.

REGULATION 7-1.4 (C): RECORDS MANAGEMENT

The division superintendent and/or the designated records manager shall assume the responsibility for seeing that all records are retained in compliance with State Law, State Board of Education regulations, and state and local retention schedules and regulations as defined in applicable state schedules for Hanover County Public Schools Records Management. No records shall be destroyed without the authorization of the superintendent or designated records manager on forms prescribed by the Virginia State Library and Archives.