

**Report Regarding Investigation
into Misconduct at Stone Bridge High School
and Broad Run High School**

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Dated: December 31, 2021

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I. Executive Summary

Blankingship & Keith, P.C. ("Counsel") has investigated the Loudoun County School Board's (the "School Board") request that it explore certain events that occurred on, and led up to, incidents on May 28, 2021, and October 6, 2021, at two high schools of the Loudoun County Public Schools ("LCPS"). Counsel also was asked to review LCPS's response to these incidents and to provide any recommendations for improvement.

Specifically, on October 28, 2021, Counsel was asked to investigate allegations of sexual assault that had been made by two separate victims but that were perpetrated by the same male student. These separate incidents occurred on May 28, 2021, at Stone Bridge High School ("Stone Bridge HS") and on October 6, 2021, at Broad Run High School ("Broad Run HS"). The School Board asked Counsel to address the following issues:

- (1) Provide a specific timeline of events.
- (2) What could LCPS have done differently with respect to the Stone Bridge HS incident that may have prevented the incident at Broad Run HS?
 - a. Whether LCPS could have or should have conducted a threat assessment of the perpetrator as part of that analysis.
 - b. Address the laws associated with LCPS's response to the Stone Bridge HS incident and whether LCPS's legal interpretations were wrong and if Counsel has any recommendations on what LCPS can change, or can ask to have changed, legislatively.
- (3) What can LCPS do to improve its processes to make sure these incidents do not happen again?

Counsel conducted an extensive investigation of the issues, as requested by the School Board. That investigation included 23 interviews of staff and a review of emails and other pertinent videos, documents, and records relating to the two incidents. As a result of its investigation, Counsel has concluded, among other things, that: (1) LCPS should not have unduly delayed its Title IX complaint investigation process after the Stone Bridge HS incident, despite the direction to that effect from the Sheriff's Department; (2) it would have been beneficial for LCPS to have conducted a threat assessment of the student responsible after the Stone Bridge HS incident, although it would not necessarily have prevented the Broad Run HS incident; and (3) LCPS appears to have taken an overly narrow view of its Title IX obligations in this matter.

II. Timeline of Events: What Happened?

The School Board's first request of Counsel was that it investigate and report on the timeline of events surrounding the two sexual assaults that occurred at Stone Bridge HS on May 28, 2021, and at Broad Run HS on October 6, 2021. The brief narrative in the first subsection provides a general overview of the incidents, which in turn provides context for the significant factual detail provided in the rest of this section.

A. Background, Briefly

On May 28, 2021, a week before the last day of the 2020-21 school year ("SY"), at approximately 1:15 p.m., a 15-year-old freshman girl ("Victim 1") and her friend reported to an assistant principal that Victim 1 had been sexually assaulted in a girls' bathroom at Stone Bridge HS by a 15-year-old freshman boy (the "Perpetrator"). The assistant principal promptly contacted the Stone Bridge HS Security Resource Officer ("SRO").¹ Immediately thereafter, the Loudoun County Sheriff's Office ("LCSO" or "Sheriff's Department") took over the investigation.

Approximately 15 minutes later, at 1:28. p.m. the Stone Bridge HS principal emailed his supervisors the following report:

I have a female student who alleges another student attempted to rape her in the bathroom today. We are sending this to law enforcement. The girl is currently with the nurse. We will address this by the numbers. This is the same student [the victim] who was transferred here from THS [REDACTED].²

While it was not known by LCPS at the time, on or about July 2, 2021, the Perpetrator was charged with two criminal counts of forcible sodomy, after which he was detained in the Loudoun County Juvenile Detention Center ("JDC") until his release on July 27, 2021.³ As a condition of the Perpetrator's release, among other things, a judge in the Loudoun County Juvenile and Domestic Relations Court (the "J&DR Court") entered an order prohibiting the Perpetrator from returning to Stone Bridge HS.

On August 17, 2021, the Perpetrator's mother called LCPS's Central Office to ask where the Perpetrator should expect to attend school for SY 2021-22. By this point, the Central Office had not started a Title IX investigation. Because staff had ceded responsibility for, and the timing of, the investigation entirely to the Sheriff's Department, they knew virtually nothing about what had happened at Stone Bridge HS on May 28, 2021, outside of what the Stone Bridge HS Principal had shared in the email he sent to his supervisors on May 28, 2021.

On August 23, 2021, the Perpetrator's mother called Central Office a second time. During this call, she shared that the Perpetrator had been criminally charged, and she informed

¹ LCPS SROs are employed by the LCSO and assigned to schools.

² The last sentence, which is discussed more fully in section II.C(1), *infra*, relates to [REDACTED]

[REDACTED] shortly thereafter, Victim 1 transferred to Stone Bridge HS.

³ While the subject of much debate between LCPS and the LCSO, LCPS does not believe that it received notice of these charges until on or around October 5, 2021. This issue is addressed more fully in section II.D(1).

LCPS that her son was not permitted to return to Stone Bridge HS. Two days later, on August 25, 2021, and one day before the first day of SY 2021-22, the principal of Stone Bridge HS sent a letter to the Perpetrator's mother informing her that he had recommended an involuntary transfer of the Perpetrator to Broad Run HS on the ground that the Perpetrator had "entered a female bathroom," in violation of School Board Policy 8210.⁴ The Director of School Administration accepted this recommendation and, on August 27, 2021, one day after the first day of the new school year, the Perpetrator's mother was informed that LCPS had transferred the Perpetrator to Broad Run HS. Evidently, LCPS did not consider assigning the Perpetrator to an alternative education program rather than another regular high school.⁵

Less than six weeks later, at approximately 12:30 p.m. on October 6, 2021, the Perpetrator, now a 10th grade student at Broad Run HS, pulled a 10th grade female student ("Victim 2") into an empty classroom as they were walking together to his class and sexually assaulted her.⁶ Victim 2 immediately reported the incident to Broad Run HS's SRO, who began an investigation at the direction of the Sheriff's Office.

The Perpetrator later was tried on the criminal charges relating to the Stone Bridge HS incident and was found guilty. At a separate, later hearing, the Perpetrator pleaded no contest to the charges relating to the Broad Run HS incident. Sentencing on all charges relating to both incidents is scheduled for January 12, 2022.

On October 14, 2021, LCPS started a Title IX investigation into the Broad Run HS incident. On October 21, 2021, LCPS started a Title IX investigation into the Stone Bridge HS incident.

B. Perpetrator's Background

The Perpetrator first enrolled in LCPS as a 5th grade student in November 2016. Previously, the Perpetrator had been found eligible for [REDACTED] in Fairfax County under the category [REDACTED]. The Perpetrator was enrolled in LCPS for only a few months, until February 2017, when he transferred to the Middletown Township School

⁴ While the principal did not specify the specific provision within Policy 8210 that the Perpetrator violated, Counsel assumes it was subsection F.8., which allows a student to be disciplined for "[p]articipation in unauthorized occupancy of any part of a school building" Policy 8210 (F)(8).

⁵ Code of Virginia section 22.1-277.2:1(A) allows local school divisions to require a student charged with certain serious criminal offenses (including the charges involved here) to attend an alternative educational program, following the exhaustion of due process procedures similar to those utilized in disciplinary proceedings.

⁶ As was the case with Victim 1, the Perpetrator and Victim 2 were friends at the time of the incident. As discussed below, the sexual assault committed against Victim 2 involved a "chokehold," that may or may not have been intended as a "joke," and the Perpetrator making skin-on-skin contact with Victim 2 as he slid his hand up and underneath her sweatshirt.

District in New Jersey, where he lived with his father for a short time. The Perpetrator returned to LCPS the following school year for 6th grade.

Prior to the incidents that are the subject of this report, the Perpetrator exhibited some history of maladaptive behavior. According to an IEP from October 2020, he had issues with self-regulation, work completion, compliance, and off-task behavior.⁷ On June 1, 2021, just after the Stone Bridge HS incident, the Perpetrator's mother told a detective from the LCSO that the Perpetrator "feeds off of any attention . . . negative and positive. And if he finds . . . another troubled kid . . . he [in certain circumstances] uses them as accomplices." In an interview reported by the Daily Mail⁸ (a British newspaper) after both the Stone Bridge HS incident and the Broad Run HS incident, the Perpetrator's mother stated that the Perpetrator had sent nude photos of himself to a female classmate when he was in the 5th grade. Unnamed sources in the article claim the female student's parents did not pursue charges because school administrators agreed to keep the Perpetrator away from their daughter. This supposed incident is not reflected in LCPS's discipline records for the Perpetrator that were provided to Counsel. According to his mother, after the 2018 winter break, the Perpetrator moved to New Jersey with his father and [REDACTED]

The Perpetrator's disciplinary file with LCPS reflects that he was suspended six times when he was in 6th and 7th grades for fighting, assault (slapping a teacher's hand), and disrespect.

C. The Stone Bridge HS Incident (May 28, 2021)

1. School Year 2020-21

The Perpetrator and Victim 1 were both 9th grade students during SY 2020-21. The Perpetrator attended Stone Bridge HS, and Victim 1 began the year at Tuscarora High School ("Tuscarora HS"). Because of the Covid-19 pandemic, SY 2020-21 started with all LCPS students attending school remotely. LCPS started hybrid, in-person school on March 3, 2021, which included in-person school for special education students, including the Perpetrator and Victim 1. By the time Victim 1 started in-person school, she had transferred from Tuscarora HS to Stone Bridge HS.

While a specific investigation of Victim 1's background and the circumstances of her transfer from Tuscarora HS to Stone Bridge HS was not the focus of what Counsel was asked to investigate, [REDACTED]

⁷ During all times pertinent to this report, the Perpetrator has been, and is, eligible for [REDACTED]

⁸ <https://www.dailymail.co.uk/news/article-10156749/Mother-skirt-wearing-teen-raped-female-classmate-says-identifies-male.html>.

[REDACTED]

[REDACTED] On November 23, 2020, Victim 1 emailed a school counselor and asked how she could transfer to Stone Bridge HS. On December 15, 2020, the School Board approved Victim 1's voluntary transfer to Stone Bridge HS.

2. Perpetrator's Suspected Gender Fluidity

On February 6, 2021, the Perpetrator conveyed to a classmate through Google Hangouts that he had told his mother that he is pansexual.¹⁰ In March 2021, when the Perpetrator began attending school in-person at Stone Bridge HS, teachers reported that he wore his hair tied back in a bun and would sometimes dress in skirts or kilts. One teacher reported that the Perpetrator wore fishnet gloves from time-to-time. At least one teacher expressed the view that the Perpetrator's clothing choices reflected his attention seeking behavior, a view shared by the Perpetrator's mother.¹¹

Counsel found no evidence that the Perpetrator identified as a female or that he wore a skirt or kilt in an effort to gain access to the girls' bathrooms. To the contrary, the Perpetrator's teachers reported that he preferred and requested male pronouns and other school officials noted that it was not atypical in today's high school environment for students to dress in a manner not traditionally associated with their identified gender.

Teachers and administrators recalled that the Perpetrator's clothing choices did not particularly stand out in the school and that he was less creative and flamboyant than others in his friend group, a group whom one administrator described as being "creative in their clothing" as "they were exploring LGBT kind of things together, which is normal in high schools." The Perpetrator's mother also expressed the opinion that the Perpetrator is not transgender and that he

⁹ During the course of this investigation, Counsel became privy to a great deal of background information about both the Perpetrator and Victim 1 through the preservation of their "chat" or text history through Google Handouts, which is part of the suite of Google software that LCPS makes available to students and staff. Google Hangouts allows students to, essentially, chat or text with one another individually or in groups, both in school and outside of school.

¹⁰ Pansexuality is sexual, romantic, or emotional attraction towards people regardless of their sex or gender identity.

¹¹ The Daily Mail published an undated and alleged picture of the Perpetrator that purports to show him standing in front of a flag that represents pansexuality in a kilt, a dark shirt with a deep "v" neckline and wearing a choker with the word "Kitten" spelled across the neck. The Perpetrator's mother opined that he simply "was trying to find himself and that involved all kinds of styles. I believe he was doing it because it gave him the attention he desperately needed and sought."

identifies as a male. As for his presence in the girls' bathrooms, [REDACTED] the Perpetrator was never observed by anyone in a girls' bathroom or trying to access a girls' bathroom.

3. The Perpetrator and Victim 1 Become Friends [REDACTED] in the Month Prior to the May 28 Incident, and Other Events Leading to that Incident

On April 20, 2021, about six weeks into in-person school, Victim 1 emailed her counselor and asked if she could switch to a smaller study hall. Her request was granted, and on April 23, 2021, Victim 1 transferred into the Perpetrator's study hall for block 7. As recounted by Victim 1 in trial testimony, she and the Perpetrator met in study hall, shared friends in common, and became friends. [REDACTED]

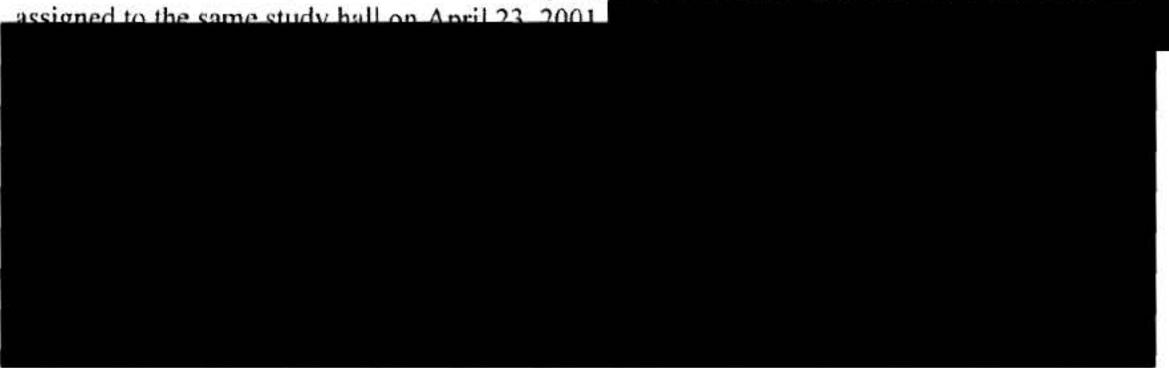
According to trial testimony from Victim 1 and the Perpetrator's interviews with the LCSO,¹² [REDACTED]

Stone Bridge HS uses an "e-pass" system to track student requests to leave the classroom during instructional periods. The student creates an "e-pass" on his or her Chromebook, which the teacher approves, and the system keeps track of when a student leaves the classroom, where the student is approved to go in the school, and when the student returns to the classroom. Using records from the e-pass system as well as communications between Victim 1 and the Perpetrator through a social media account called Discord,¹³ Counsel has been able to reconstruct what appear to be certain movements of Victim 1 and the Perpetrator in the days leading up to the May 28 incident, as well as their movements on May 28. Relevant portions of that summary follow.

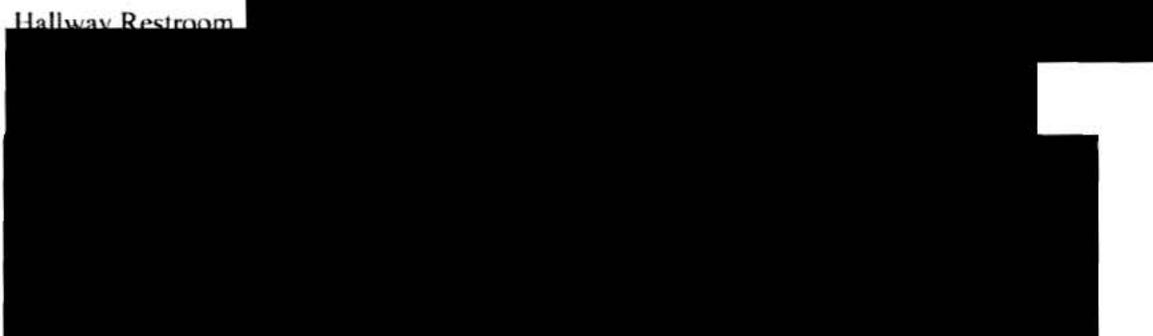
¹² As part of the investigation, Counsel met with attorneys from the Loudoun County Commonwealth's Attorney's Office ("CA's Office"), who provided recordings of the LCSO's interviews with the Perpetrator from the Stone Bridge HS incident. The LCSO has declined to provide this information directly to LCPS.

¹³ Discord is an instant messaging and digital distribution platform that allow users to communicate through different mediums, including text messaging and private chats. Victim 1, the Perpetrator, their friends, and likely other students within LCPS use Discord as a way to communicate with one another during and after school in an unmonitored environment. It appears that some students have figured out how to access Discord on their LCPS issued Chromebooks, making Discord a popular way to communicate during class. As part of LCSO's investigation into the Stone Bridge HS incident, it subpoenaed records directly from Discord and provided them to the CA's Office. Counsel requested these records from the CA's Office, but it declined to provide them. Counsel's knowledge of the content of the Discord messages between Victim 1 and the Perpetrator is limited to the Discord messages that were used in the trial of the charges arising from the Stone Bridge HS incident.

As noted above, Victim 1 and the Perpetrator became friends shortly after they were assigned to the same study hall on April 23, 2021.



On Friday, May 21, 2021, Victim 1 and the Perpetrator first communicated with one another on Discord. That same day, Victim 1 and the Perpetrator had overlapping e-passes excusing them from class for twenty minutes from 10:06 a.m. to 10:25 a.m. Victim 1 was excused to visit the 200 Hallway Restroom and the Perpetrator was excused to visit the Main Hallway Restroom.



On Wednesday, May 26, 2021, Victim 1 and the Perpetrator had overlapping e-passes excusing them from class for thirteen minutes from 10:37 a.m. to 10:50 a.m.¹⁵ Victim 1 was excused to the Garden Courtyard for a mask break, and the Perpetrator was excused to visit the Main Hallway Restroom.



¹⁴ Counsel was informed that Victim 1 has a 



¹⁵ During the course of the investigation, Counsel interviewed teachers that released both Victim 1 and the Perpetrator for overlapping hall passes. None of the teachers reported anything out of the ordinary when either student left or returned to the classroom.

4. May 28, As the Events Unfolded

According to Victim 1's trial testimony, on the evening of May 27, 2021, she went to the hospital for a few hours [REDACTED]. She testified that she did not get home from the hospital until around 3:00 a.m. on the morning of May 28, 2021.

Victim 1 attended school on May 28, and she and the Perpetrator talked (as they always did) in the cafeteria where all of the students gather before the beginning of the school day. Victim 1 told the Perpetrator that she felt weak, and the two continued to communicate with each other by Discord over the course of the day.

From 10:18 a.m. to 10:48 a.m., Victim 1 and the Perpetrator had overlapping e-passes excusing them from class for thirty minutes. Victim 1 was excused to visit the nurse's office, and the Perpetrator was excused to visit the Main Hallway Restroom. According to Victim 1's trial testimony, at the Perpetrator's suggestion, Victim 1 and the Perpetrator met in the girls' bathroom on the science floor, which is in the corner of the main floor of Stone Bridge HS. At the time, Victim 1 still felt very weak and fatigued from the hospital. The Perpetrator helped Victim 1 drink water and "then got [Victim 1] a little bit better and like stronger." The students did not engage in any physical contact or sexual activity during this encounter. After about twenty minutes in the bathroom, both students returned to their classrooms.

At 10:41 a.m., towards the end of the students' meeting in the bathroom, the Perpetrator's classroom teacher became concerned that the Perpetrator had been out of the classroom for an extended period of time, so she sent an email to the Stone Bridge HS administrative team. She wrote, "My student [Perpetrator's name] has been out of my classroom (213) on an EHP [electronic hall pass] for over 20 minutes. His pass began at 10:18, and at 10:40 he has still not returned. He should have gone to the 200 Hallway restroom, but possibly has gone to the Main Hallway restroom or is wandering around." The administrative team responded that they were "on it," but, shortly thereafter, the Perpetrator's teacher reported that he had returned to the classroom, saying that "he felt sick and needed to walk around."

At 11:08 a.m., block 6 started, with Victim 1 attending Health and PE and the Perpetrator attending Earth Science. During block 6, Victim 1 and the Perpetrator communicated by Discord about meeting again in the bathroom. The Perpetrator suggested that the two of them "have fun" in the bathroom. Victim 1 agreed to meet with the Perpetrator but wrote, "I'll meet with you but I'm not promising anything." Victim 1 then wrote the Perpetrator and told him that she was waiting for him in the bathroom but that she needed to be back in class by 12:15 p.m. At 11:59 a.m., the Perpetrator was issued an e-pass until his return to the classroom at 12:15 p.m.

Between 11:59 a.m. and 12:15 p.m., Victim 1 and the Perpetrator met in bathroom L200, which is underneath the main floor by the stairs. Victim 1 testified that she had never been to that

bathroom before, so the Perpetrator gave her directions. Victim 1 was the first to arrive at the girls' bathroom and she sat in the handicapped stall until the Perpetrator arrived.

According to Victim 1's trial testimony, the Perpetrator found her in the handicapped stall and latched the door shut. The two students talked for a bit about class, and the Perpetrator "rearranged her phone screen." Victim 1 was feeling a bit better, but it was still hard for her to walk. While the students were talking, the Perpetrator started to get "touchy" with Victim 1, by grabbing on her body and on her neck in a choking manner.

She told the Perpetrator that she was not in the mood and was not comfortable, and she tried to get him off of her, but she was still very weak. The Perpetrator flipped Victim 1 over, put her face down on the ground, and she could not move. "And then he sexually assaulted [Victim 1]." Victim 1 kept telling the Perpetrator to get off of her, but he kept saying, "no, its fine. It's ok." Victim 1 testified that the Perpetrator engaged in non-consensual anal and oral sex with her.

Victim 1 testified that three people walked into the bathroom during the assault.¹⁶ When the first person walked in, the Perpetrator "got off of [her] from [her] facing down. And then the mouth happened,¹⁷ and then another person walked in." After the assault, Victim 1 testified that, "we just sat there for a second because I was trying to wrap my head around it. And then I said I had to go and went back to PE."

According to the Perpetrator's interview with the LCSO, his encounter with Victim 1 went as follows. Once he was in the bathroom stall, he believes he made a sexual comment that was received "like a tennis match" and "kept going back and forth" like a "bro thing . . . like how two dudes will talk about girls." The Perpetrator was then fake physical fighting, but not hitting each other, and then he gently put his right hand to her left shoulder and held her against the wall. The Perpetrator asked Victim 1 if she wanted to have sex, and she responded, with "whatever." They both "got ready," and when he went to insert his penis, he meant to go a bit lower and "went into the wrong one," which put Victim 1 into a painful state. The Perpetrator reported that the anal sex lasted for about ten seconds and then ended. He confessed to the LCSO that putting his penis in the wrong spot was "messing up" and could be taken for rape. As for the allegation of non-consensual oral sex, the Perpetrator claimed that, as he got up from the floor, his watch got caught on his skirt and exposed his penis near Victim 1's mouth. While he was positioned in a way that prevented him from seeing Victim 1's face, he did not intend to put his

¹⁶ One of the people who walked into the bathroom was a Stone Bridge HS teaching assistant ("TA"). The TA reported later that she saw two sets of feet in the same stall, but she did not hear any noise coming from the stall. The TA immediately left the bathroom without saying anything, and she did not report what she saw. Stone Bridge HS administrators learned of the TA's presence in the bathroom later that day while reviewing video footage captured by a hallway camera outside of the bathroom during the encounter. The TA is no longer employed by LCPS.

¹⁷ Separately, and somewhat inconsistently, Victim 1 testified at trial that, because of the pandemic, she was wearing a mask during the encounter.

penis in her mouth. Once the sex was over, the Perpetrator reported that he and Victim 1 talked for five more minutes, which included hinting at the idea of doing something "of that same area" another time. Then, according to the Perpetrator, they "got on about their days."

5. Events After the Assault and Victim 1 Reports the Assault

After the assault, the Perpetrator returned to class by 12:15 p.m. According to Victim 1, she returned to Health and PE "and then I told everybody what happened," which Counsel interprets to mean that she told her friends. At that immediate time, she did not make a report to teachers or administrators.

At 12:36 p.m., block 7 started, which included the lunch period. Block 7 also is the study hall that Victim 1 and the Perpetrator have together. This study hall has "B" lunch, which means the first part of class is before lunch and the second part of the class is after lunch. During the first part of the class (before lunch), the Perpetrator thought he saw his name on a message that had been sent to a common friend of both Victim 1 and the Perpetrator. In response to seeing his name, the Perpetrator sent Victim 1 a Discord message that said, "What did you send [friend's name] because she has officially lost her sh*t with me." (Edited by Counsel.)

At approximately 1:00 p.m., the first part of study hall ended, the bell rang for lunch, and, according to Victim 1, "we all went to the main office to tell them what happened," which Victim 1 testified was "a good 30 to 50 minutes" after the assault.

During the lunch period, Victim 1 went to the main office with a friend and reported the assault to an assistant principal (an "AP"). The AP told Victim 1's "alphabet" AP,¹⁸ who reported the incident to the Stone Bridge HS SRO, who is an LCSD employee.

At 1:22 p.m., the AP who received the report, took Victim 1 to the nurse's office. The nurse's report from that encounter states:

Student states that she went to the bathroom with another student (male) @ 12:00 pm today Student states that she was sitting in the handicapped stall with fellow (male) student. States that he "tried to choke me" and he "he flipped me over." The student was prone on the bathroom floor. The student states that he "pulled my pants down." Student states that she was penetrated anally. Student states he "grabbed my breasts." Student states that "someone came into the bathroom, and he stopped then he tried to make me perform oral sex but I didn't." She left the bathroom stall after refusing to perform oral sex. Student is alert and was able to recount what happened to her with a clear voice/normal tone All Assistant Principals, the Sheriff Deputy, Counselor and Parents are all aware. Student is with them.

¹⁸ Each AP is assigned students in a certain part of the alphabet.

At 1:28 p.m., the Stone Bridge HS principal informed his supervisors of Victim 1's allegations by sending the email described above on page 2. The principal also forwarded the message to the Director of School Administration with the note, "The police are handling this at this time."

6. Victim 1's Parents Arrive at Broad Run HS and Notice to the School Board

Victim 1's mother arrived at Stone Bridge HS soon after Victim 1 reported the incident to an AP. Shortly thereafter, Victim 1's father arrived at Stone Bridge HS. When he arrived at the main office, he began shouting "someone raped my daughter," "where is the kid," and "I will get him." The Stone Bridge HS principal asked Victim 1's father to calm down, which caused him to respond, "who the (***) are you?" and he took an aggressive step towards the principal. (Edited by Counsel.) The SRO intervened and called for more police support at the school. Officers with the LCSO eventually were able to relocate Victim 1's father outside of the building and convinced him to leave school grounds before the students were dismissed for the day.

At 3:09 p.m., the Stone Bridge HS principal documented this interaction in an email to his supervisors. At 4:09 p.m., the LCPS superintendent sent the School Board a "confidential" email that said,

The purpose of this email is to provide you with information regarding an incident that occurred at Stone Bridge HS. This afternoon a female student alleged that a male student sexually assaulted her in the restroom. The LCSO is investigating the matter. Secondary to the assault investigation, the female student's parent responded to the school and caused a disruption by using threatening and profane language that was overheard by staff and students. Additional law enforcement units responded to the school to assist with the parent.

The school's counseling team is providing services for students who witnessed the parent's behavior. The alleged victim is being tended to by LCSO.

As LCSO is investigating both incidents, further updates may not be available.

7. LCSO Takes Control of the Investigation

As soon as the Stone Bridge HS AP reported Victim 1's allegations to the SRO, the SRO and the LCSO took control of the investigation. Based on the understanding of a number of LCPS and Broad Run HS administrators, LCPS believed that the Memorandum of Understanding ("MOU")¹⁹ between LCSO, the Leesburg Police Department, and LCPS prohibited them from further investigating Victim 1's allegations during the course of the LCSO's investigation.

¹⁹ The MOU is further discussed in Section III(B) below.

Specifically, the Director of School Administration recounted for Counsel a situation in which an officer with the LCSO threatened to arrest him for advancing an investigation while the LCSO was investigating the same incident, which involved potential criminal charges. The Stone Bridge HS principal shared the same view and explained to Counsel that he was taught in LCPS trainings that the MOU required all potential criminal matters to be turned over to the LCSO and that LCPS was prohibited from conducting a parallel investigation at the penalty of being arrested. Indeed, and consistent with that experience, the Stone Bridge HS principal reported that he received a visit from an undersheriff with the LCSO on June 2, 2021, after the Stone Bridge HS incident, who questioned him about his administrators' handling of Victim 1's report and reminded him that any staff who investigated the allegations could be arrested.

Later in the evening of May 28, 2021, Victim 1 underwent a forensic interview at the Child Advocacy Center. [REDACTED]

The Perpetrator was interviewed by the LCSO on June 1, 2021, and, again, on June 2, 2021.²⁰

8. The Students Return to Stone Bridge HS on June 1, the Remainder of the School Year at Stone Bridge HS, and the Limited Supportive Measures for Victim 1

The May 28 incident occurred on the Friday before the Memorial Day extended weekend, and no school was scheduled for Monday, May 31, 2021. Because the LCSO was investigating Victim 1's allegations, the Stone Bridge HS principal did not believe that he had enough information to discipline the Perpetrator at that time. However, the principal did have a conversation with the Director of School Administration and confirmed that he would keep Victim 1 and the Perpetrator separated upon their return to school.

The Perpetrator reported for school on Tuesday, June 1, 2021, surprisingly, with his mother. In order to ensure Victim 1 and the Perpetrator remained separated, the principal planned to place him in "school within a school," which is a room where a teacher or a TA can watch students during the course of the school day. The Perpetrator's mother consented to the Perpetrator's placement in "school within a school" for the rest of the week, and she agreed to stay with him in the room and to monitor him for the entire week. The Stone Bridge HS administration would have had to take other measures to keep the Perpetrator separated from Victim 1 if his mother had not agreed to have him placed in the school within a school.²¹

²⁰ Counsel was able to obtain recordings of these interviews and reviewed them as part of its investigation.

²¹ To date, LCPS has not disciplined the Perpetrator for the Stone Bridge HS incident because, until recently, it did not think it was able to investigate the incident or provide the Perpetrator

Victim 1 also reported for school on Tuesday, June 1, 2021, but, at the very beginning of the school day, she either left school on her own or her parents removed her. At 12:09 p.m., Victim 1 emailed a teacher and wrote, "Listen they took me off campus because of my father. I don't know if I'm able to come in for the running today. I'll keep u updated." Victim 1 emailed a second teacher and wrote, "please don't listen to my mom I want to be present [at theater production class] and need to so please don't take that away from me." At 12:10 p.m. Victim 1 began a long text exchange on Google Hangouts with a friend from school and disclosed "that im not allowed on school rn [right now]. Cause of [the Perpetrator]." ²² [REDACTED]

On June 12, 2021, Victim 1 texted three friends through Google Hangouts and informed them that [REDACTED]. She also emailed a teacher and asked, "Hey [teacher's name] I was wondering how everything went and if I still got inducted [related to theater class] even though I wasn't there. I'm currently [REDACTED] so sorry for that I wish I was there!"

On June 15, 2021, Victim 1 emailed nine of her teachers and said, "Good morning everyone I just wanted to thank everyone for being such amazing teachers. I know I'm not in school today for the last day I wish I was [sic] to spend with everyone but thank you for being so amazing with my situation. I hope y'all have a great summer and I will see you next year hopefully!"

On June 26, 2021, Victim 1 texted a school friend through Google Hangouts and reported, "Im back home."

[REDACTED]

Apart from Victim 1's self-initiated communications with Stone Bridge HS teachers, LCPS does not appear to have made any outreach to Victim 1 or her family to check on her or to otherwise offer supportive measures as a victim of sexual harassment. The only known contact with Victim 1 or her family is a meeting that was held between a counselor and Victim 1's mother in the days before SY 2021-22 started in which the counselor informed Victim 1's mother that the Perpetrator would not be returning to Stone Bridge HS.

with due process while LCPSO was investigating the incident. The Title IX grievance process is now underway.

²² At no point did LCPS remove Victim 1 from Stone Bridge HS. Victim 1's absence from school was entirely voluntary.

9. Postscript on Victim 1

Victim 1 is still a student at a Stone Bridge HS. Early in in SY 2021-22, Victim 1 became the victim of a physical assault. While Counsel was not charged with investigating that incident, witnesses who were interviewed in this investigation reported that Victim 1 was attacked by a female student who believed that Victim 1 had made disparaging comments about her brother. Apparently, the assault was captured on video and posted on social media. Victim 1 obtained a protective order against her assailant, and the assailant has been transferred to North Star, a LCPS facility that, among other things, provides educational services to students who may pose a threat to the safety of others.

Also during the course of this investigation, Counsel reviewed a message exchange between Victim 1 and a Stone Bridge HS student who was in the same friend group as Victim 1 and the Perpetrator. In the text thread, which took place on September 17, 2021, Victim 1 confronted her friend about hearing a rumor that the friend, also, had been the victim of non-consensual sex with the Perpetrator. The friend confirmed the truth of the rumor but remained steadfast in her refusal to report it.

D. Summer of 2021

1. LCSO's Investigation into the May 28 Incident and Subsequent Charges

After interviewing the Perpetrator on June 1 and June 2, 2021, the LCSO did not immediately charge the Perpetrator with any crimes because the detective in charge of the investigation did not believe that her investigation had been completed. Among other things, the detective was waiting for the results of a sexual assault nurse exam, commonly referred to as a SANE exam. She also had obtained and served a search warrant on Discord for communications between the Perpetrator and Victim 1, which were not received until July 6, 2021.

On July 2, 2021, at the Juvenile Intake office of the J&DR Court, the LCSO detective swore out petitions of arrest on two counts of forcible sodomy for the Perpetrator as well as a request for a detention order. Around this same time, the LCSO alleges in a much later letter sent to the superintendent on November 10, 2021, that the detective communicated with a probation officer in the Loudoun County Juvenile Court Service Unit ("JCSU") and asked if the LCSO should make the arrest notification to LCPS. The LCSO alleges that the JCSU informed the detective that JCSU would make the notification. LCPS states that it did not receive written notice of the charges from the JCSU until late September or early October 2021 when it simply arrived by mail at Central Office.

On July 8, 2021, the J&DR Court issued a petition for arrest and a detention order for the Perpetrator, and the Perpetrator surrendered himself to the LCSO this same day. The Perpetrator

remained incarcerated pursuant to the detention order until his release on July 27, 2021.²³ The order granting the Perpetrator's release contained a provision that prohibited the Perpetrator from returning to Stone Bridge HS.

2. Status of LCPS's Title IX Investigation and LCPS's Meetings with the LCSO

As noted above, LCPS did not investigate Victim 1's allegations of sexual assault, believing that it was necessary to wait for the LCSO to complete its investigation. As best Counsel could determine, LCPS did not take any steps to address the investigation until almost three months after the incident when, on August 17, 2021, the Director of School Administration emailed LCPS's Title IX Coordinator and a Title IX investigator and asked, "Have either of you started a Title IX investigation into [Victim 1]. This was a student v. student issue at Stone Bridge HS last May. I just spoke with [the Perpetrator's] parent - she contacted our office." The Title IX investigator responded, "I have not launched an investigation. Law enforcement was involved also." The Director of School Administration responded, "This is an example, where we, by law, have to be involved earlier in the process - I hope to work out those details today."

Thirty minutes after the above exchange, the Director of School Administration participated in a pre-planned meeting with representatives from the LCSO to discuss each other's respective roles in conducting parallel investigations when criminal charges could be issued. No resolution was reached at this meeting, in part, because the LCSO was waiting to participate in training planned for September 26, 2021, with the Department of Justice and the Virginia Department of Education. The LCPS and LCSO representatives held a follow up meeting on September 29, 2021, and proposals and counterproposals were exchanged but, again, no resolution was reached. Upon information and belief, as of the date of this report, the LCSO has refused to share with LCPS any information it has learned from its investigation of the Stone Bridge HS incident. Also, upon information and belief, as of the date of this report, LCPS and LCSO have not agreed on a process for how they can conduct parallel investigations.

The day after the first meeting with the LCSO, on August 18, 2021, a Stone Bridge HS Safety and Security Officer ("SSO") emailed the LCSO detective in charge of the investigation and asked if the school could begin its administrative investigation. It does not appear that there was any response to, or follow up from, this email.

3. LCPS is Notified by the Perpetrator's Mother that Charges Have Been Filed. Discussion of Whether to Conduct Title IX Investigation, and Involuntary Transfer of Perpetrator to Broad Run HS

²³ Pursuant to Virginia law, a child must be released from secure detention if the child has not had an adjudication of charges within twenty-one days from the date the child was first detained. Va. Code § 16.1-277.1.

As noted above, on August 17, 2021, and then again on August 23, 2021, the Perpetrator's mother reached out to the Director of School Administration, told him about the court order restricting the Perpetrator from returning to Stone Bridge HS, and asked to discuss where the Perpetrator would be attending school for SY 2021-22. During this conversation, the Director of School Administration was informed that the Perpetrator had been charged with crimes, but he was not told what the charges were. According to the Director of School Administration, he asked for information about the charges, but the Perpetrator's mother told him that she wanted to keep it private.

According to the Perpetrator's mother, as reported in the Daily Mail article referenced above, the Director of School Administration told her during this conversation that the Perpetrator had a right to return to Stone Bridge HS because LCPS could not investigate the allegations or take disciplinary action until the law enforcement action had completed.

On the same day as his conversation with the Perpetrator's mother on August 23, 2021, the Director of School Administration emailed his contact in the LCSO, informed him about his communication with the Perpetrator's mother, and asked for an update on the criminal case. The LCSO contact responded nominally to the email, but he deferred any substantive response to a colleague on the Special Victims Unit "[s]ince this is an active criminal investigation."

Also on August 23, 2021, and minutes after sending the email to the LCSO, the Director of School Administration emailed the Title IX Coordinator and the Title IX investigator and told them, "The mom shared that her son was charged. Have we started a Title IX investigation? The incident occurred last May. Mom is certain judge told her son he cannot go back to Stone Bridge. However, neither I nor [the principal of Stone Bridge HS] has received any documentation."

The Title IX Coordinator responded quickly to this email and stated that LCPS was not in a position to start a Title IX investigation because, "I am still operating from an allegation of an *attempted* sexual assault which is not under Title IX." (Emphasis added by Counsel.) An email dialog ensued over the course of the evening between the Director of School Administration, the Title IX Coordinator, and the Title IX investigator in which they debate whether *attempted* sexual assault gives rise to a Title IX investigation, as opposed to an allegation of sexual assault. Ultimately, the Title IX Coordinator concluded that, "[m]y review based on the information we have is this does not rise to the level of Title IX. An allegation of rape yes, an allegation of attempted rape? Maybe."

The next morning, on August 24, 2021, the Title IX Coordinator started a separate email dialogue with the Title IX investigator, who expressed the view that she believed the case falls within Title IX under "unwelcome sexual advances." But, again, the Title IX Coordinator concluded, "I agree with your comments. It is likely based on the limited information that we have some unwelcome conduct. I'm not ready to sign a complaint given what we have (or don't have). I think if mom could share the charges or perhaps we could get something from the

investigators? I am happy to call the complainant to discuss the process.”²⁴ That same day, the Title IX Coordinator informed the Director of School Administration that “I do not believe it appropriate to sign a formal [Title IX] complaint without further review. Based on what I shared yesterday about engaging LE [law enforcement], we would be on standby for information from LE and would not start a Title IX review without collaborating with them.”²⁵

In late August 2021, LCPS needed to act on the J&DR Court order prohibiting the Perpetrator from returning to Stone Bridge HS. On August 25, 2021, the day before the first day of SY 2021-22, LCPS wrote the Perpetrator’s mother a letter notifying her that the Stone Bridge HS principal was recommending an involuntary transfer of the Perpetrator to Broad Run HS. The stated reason in the notice of involuntary transfer was because the Perpetrator “entered a female bathroom in the lower 500 hallway. As a result, an incident with another student ensued requiring a report to the Loudoun County Sheriff’s Office.” On August 27, 2021, the Director of School Administration wrote the Perpetrator’s mother affirming the Stone Bridge HS principal’s recommendation for the reasons laid out in the August 25, 2021 letter. The Perpetrator missed the first 10 days of the new school year while logistics for his enrollment at Broad Run HS were resolved.

On August 26, 2021, the Perpetrator’s probation officer sent the Director of School Administration by email a copy of the court order prohibiting the Perpetrator from attending Stone Bridge HS. The probation officer also told the Director of School Administration to “note that there are provisions for no phone use (certain allowances), no social media, and no internet” and that another probation officer “is monitoring [the Perpetrator’s] current house arrest.”

E. The Broad Run HS Incident (October 6, 2021)

1. SY 2021-22

At some point before the Perpetrator arrived at Broad Run HS, the Stone Bridge HS principal called the principal of Broad Run HS to give him a “heads up” that the Perpetrator was going to be involuntarily transferred to his school, that the transfer was based on an incident that had happened at Stone Bridge HS, that the Perpetrator had been charged, and that law enforcement was investigating the incident.

On August 31, 2021, the principal of Broad Run HS held a meeting at the school among himself, a Broad Run HS AP, the Perpetrator, and the Perpetrator’s mother, during which the parties discussed the Perpetrator’s integration into Broad Run HS. During the conversation, the parties discussed transportation to Broad Run HS, the names and contact information for the

²⁴ It is clear to Counsel that, despite the LCPSO’s contention in its November 10, 2021, letter that the JCSG had agreed to send LCPS the Perpetrator’s charges, at least as of August 24, 2021, they had not been received by LCPS as required by Code of Virginia section 16.1-301.

²⁵ LCPS did not start a Title IX investigation for the Stone Bridge HS incident until a few weeks after the Perpetrator was arrested for the Broad Run HS incident on October 6, 2021.

Perpetrator's probation officers, and the fact that the Perpetrator wore an ankle monitor.²⁶ The parties also discussed the court order that prohibited the Perpetrator from accessing the internet. As a result, it was decided that the Perpetrator would not receive a LCPS-issued Chromebook.

During the meeting, the Perpetrator's mother disclosed to the Broad Run HS administrators that she had been contacted by LCPS in the past for "Gaggle Alerts"²⁷ related to the Perpetrator's use of his Chromebook for sexual content and pornography. The Perpetrator's criminal charges were not discussed at this meeting, but the Broad Run HS principal recalled that the Perpetrator's mother told him that the Perpetrator had done inappropriate things with a girl at school. The Perpetrator's mother asked that the Broad Run HS administrators keep as confidential the information that she had shared with them about the Perpetrator. They agreed.

After this meeting, the principal of Broad Run HS contacted the Perpetrator's teachers and asked them to let him know if they had any issues with the Perpetrator. The principal also, personally, checked in on the Perpetrator about once a day. Apart from these actions, LCPS did not implement any other safety measures regarding the Perpetrator's transfer to Broad Run HS. Nor, apparently, did LCPS consider assigning the Perpetrator to an alternative educational arrangement. As expressed by the AP who attended the meeting with the Perpetrator's mother, the goal was to supervise the Perpetrator as much as possible without prejudging him based on his past.

Upon his assignment to Broad Run HS, the Perpetrator wore unremarkable clothing, including jeans or long pants to cover his ankle monitor, as he was concerned that other students would see it.

Shortly after he arrived at Broad Run HS, it became apparent that it would be difficult for the Perpetrator to complete some of his assignments without a Chromebook. As such, on September 7, 2021, the principal of Broad Run HS secured permission through the Perpetrator's probation officer and from the J&DR court to allow him to use a Chromebook during the school day. The computer was administratively turned on at the beginning of the school day and was turned off at the end of the school day.

2. September 8, 2021, Disciplinary Incident

In early September, the Perpetrator was involved in a disciplinary incident at Broad Run HS. According to the victim of that incident and other witnesses, while in class on September 8, 2021, the Perpetrator began bothering a female student who sat next to him by grabbing her

²⁶ Although uncommon, it would not be unprecedented for a Broad Run HS student to wear an ankle monitor. In his eight years as principal, the principal of Broad Run HS has had three to four students wear ankle monitors.

²⁷ A "Gaggle Alert" is an alert auto-generated by Google and sent to school administrators when a student has used a LCPS issued Chromebook for inappropriate content. Google scans Chromebooks in real time for certain key words and content, which trigger the alerts.

shoulder, tapping her head with a pencil, trying to view her Chromebook while she was using it for a project that contained personal information, asking her if she had ever posted nude photos of other people online, and asking a male student who was speaking about his grandmother during an emotional moment if that student's grandmother's nude photos were ever posted online. The Perpetrator denied all of the allegations.

A Broad Run HS AP thoroughly investigated the incident, spoke with the victim's parents, spoke with the Perpetrator's mother, and imposed discipline of a reprimand. The Perpetrator also was given an assignment that required him to repeatedly write that he "will not touch others" or ask for "intimate" or "provocative" photos.

3. Days Leading Up to the October 6, 2021, Incident

On Friday, October 1, 2021, the Perpetrator sent his first text message using Google Hangouts since he had been at Stone Bridge HS. Using his LCPS Chromebook, he sent a 10th grade female student ("Victim 2")²⁸ who he had met in his math class the following message, "Hello, are you receiving this?"

The following day, on Saturday October 2, 2021, the Perpetrator's mother emailed the Perpetrator's special education teacher, the principal, and an AP expressing concern that the Perpetrator's most recent weekly report stated that he had an F in three classes and a D in another class. She also expressed the opinion that she did not believe that the Perpetrator was using his time wisely in any of those classes or that he was doing his work in study hall. As a solution, the Perpetrator's mother proposed that she "escort him to study hall to enforce proper usage of class time since he does not have the luxury of bringing work home. Kindly advise if the school is able to accommodate this request and I will plan to attend study hall for the week."

The principal of Broad Run HS responded to the email the same day and informed her that she is "welcome to come be with [the Perpetrator] anytime. I have discussed his grades with him on several occasions as I know [the special education teacher] has, she actually ran into me and [the Perpetrator] discussing his progress this week . . . I see [the Perpetrator] frequently, almost daily. He also comes up to me when he sees me to check in."

The Perpetrator's mother responded later that same Saturday, thanked the principal for his response and stated, "A classic game of wills, it seems, but now a matter of how to have him retract his talons of defiance. He has never cared about grades, and has often used these moments as another source for getting attention, i.e., good grades get him less attention. I will brainstorm ideas, and look forward to seeing everyone on Monday."

²⁸ Victim 2 is a 10th grade [REDACTED] student at Broad Run HS. [REDACTED] Victim 2 has no known disciplinary record or notable background.

On Monday, October 4, 2021, as promised, the Perpetrator's mother visited Broad Run HS and attended his study hall period with him, after which a follow up email communication ensued with the Broad Run HS administrative team about her desire that the Perpetrator not be permitted to check out manga²⁹ from the library, as she believed his reading manga during the school day was distracting him from his schoolwork. A Broad Run HS AP addressed this issue with the Perpetrator this same day.

Also on October 4, 2021, the Director of School Administration sent the principal of Broad Run HS a "for your information" memo with an attached printout dated July 6, 2021, advising him that "a student from your school has legal charges pending."³⁰ The document noted that the information is confidential, and it identified the Perpetrator as having two pending charges, both "Sexual Assault – Sodomy Forcible." The principal does not recall when he received this memo, but he reported that it would not be uncommon for him to see charge memos like this one.

On Tuesday, October 5, 2021, the Perpetrator texted Victim 2 a message through Google Hangouts with the subject "Figure it out," and wrote, "Mangos eradicating eggplants tomorrow at Rykers operational outpost manually. Time with out outrageously happy Trees having rhetorical equations equally." It is believed that the message is an anagram and means: "Meet at Room Two Oh Three."

That same day, the Perpetrator's [REDACTED] teacher saw the Perpetrator and Victim 2 in the hallway being affectionate with one another. They were standing together holding hands, they hugged and put their heads close, and the [REDACTED] teacher believes she saw them kiss. The [REDACTED] teacher described their conduct as acting like a couple and thought that they were boyfriend and girlfriend. In an interview after the October 6 incident, Victim 2 described the Perpetrator as a "school friend" and said they were not dating. She also said she had not kissed or engaged in any kind of touching with the Perpetrator.

4. The October 6 Incident

According to the Incident Summary and school security video, the October 6 incident between the Perpetrator and Victim 2 occurred as follows.

At approximately 12:33 p.m., the Perpetrator asked Victim 2 to walk with him from the Art Hallway to classroom 605. After engaging in playful banter with one another, engaging with a common friend, and walking up and down a number of hallways at the school, at 12:37 p.m., the Perpetrator and Victim 2 arrived in the hallway outside of classrooms 603 (which was empty) and 605 (where the Perpetrator had his next class). As they talked outside of classroom 603, the

²⁹ Manga are comics or graphic novels originating from Japan and includes works in a broad range of genres, including action, adventure, business and commerce, comedy, mystery, etc.

³⁰ The Director of School Administration recalled that the charges arrived at Central Office from the J&DR Court in the end of September or early October.

Perpetrator pulled Victim 2 into empty classroom 603, where they remained until they both exited the room at 12:45 p.m. Victim 2 exited classroom 603 first, and the Perpetrator followed behind her. They appear to have had a conversation, after which Victim 2 took out her phone and the Perpetrator ran into classroom 605 (his next class). Victim 2 walked away crying, texted her friend, and went to the bathroom. A few minutes later, Victim 2 and her friend walked to the main office and reported to the Broad Run HS SRO that she had been sexually assaulted by the Perpetrator. The SRO called his supervisors at the LCSO, the detective who investigated the Stone Bridge HS incident quickly arrived at Broad Run HS, and she took over the investigation.

In an interview with the LCSO after the incident, Victim 2 described the incident as follows:

So, we were walking to class. First, he walked me to class, and then I dropped my stuff off, and then he asked me to walk him to class. So, we were walking to his class, which was PE, and we were just walking. And around one of the hallways, he turns to me and he asked me, "Are you a virgin?" And I say, "Yeah, obviously."

And then he's like . . . we keep walking, he didn't really say anything like that, and the bell rings. So, I was joking around with him, I was like, "Oh, you're late, you're late," and then we were walking to class. And right before we entered his class, we were next to the empty classroom, and he like . . . I don't remember what he said. On the camera it looked like he got in front of me and he was talking to me. I don't remember what he said. I think he was saying something about "I don't care if I'm late," or something . . .

Something about me joking about him being late. And he drags me into the classroom, like pulls me, shoves me kind of. And he's looking at me and he's like, "I have a very bad past at school," or like a bad reputation or something, and he's like, "Don't joke about that." And I was like, "Sorry, I was just kidding." And then . . . he said to me, he's like, "Don't joke about me being late . . . I have a bad reputation."

And then I was sitting on top of the desk kind of, and he got behind me, and choke-holding me like this, and had his hand like that on me. I don't know if he was joking or not, it was very scary. I was like, "What are you doing?" And then I broke out of it. I was like, "What the heck?" And then I sat back down and we were talking, he was talking about how he had a bad reputation and stuff like that, and he starts getting behind me, and then he put his hand up my shirt, and I was like, "Whoa," like I backed up. And then he did it again, and I was like, "What the heck?" I kept backing up.

And then he grabbed the back of my shirt. So, he wrapped his arm around me like this and grabbed the back of my shirt so I couldn't move, and he stuck his hand in

and just put his hand on my naked boob, like no bra or anything. He just looked at me for like three seconds. And when I moved, he quickly took his hand out, and I was like, "What the heck?" And then I started backing up, and I backed closer to the door and he tried to do it again from the back again.

Victim 2 reported that the Perpetrator covered Victim 2's mouth and nose, so she could not breathe. He also attempted to touch Victim 2's breast, skin-to-skin, at least two times and did so at least once. Victim 2 was able to leave the room when the Perpetrator began walking away from her. She then met her friend in the bathroom, she told her what had happened, and her friend brought her to the office to notify school officials.

In an interview with the LCSO after the incident, the Perpetrator admitted that he pulled Victim 2 into an empty classroom because she had joked that he would be late to class, which "triggered" him. He explained that his putting his arm around her "may have been a bit touchy" and that he brought up "liking her, saying I liked her, and then brought up the idea of doing her [having sex]. That may have been taken the wrong way." When his arm was around her, he admitted that his hand was in front of her breast on the outside of her shirt. He also admitted to poking her breast on the outside of her shirt. He denied having his arm around her neck, and he denied making skin-to-skin contact with her breast. He denied covering her nose or mouth.

After interviewing the Perpetrator at Broad Run HS on the day of the incident, the LCSO took him into custody and charged him with sexual battery and abduction. The LCSO orally conveyed the specific charges to LCPS that same day.

5. LCPS Begins Title IX Investigation for Broad Run HS Incident and Stone Bridge HS Incident

On October 11, 2021, Victim 2's parents emailed LCPS's Title IX Coordinator and made a formal complaint about the Broad Run HS incident. On October 14, 2021, the Title IX Coordinator separately informed Victim 2's parents and the Perpetrator's mother that LCPS would be conducting a Title IX investigation relating to the Broad Run HS incident.

On October 21, 2021, the Title IX Coordinator informed Victim 1's lawyer and the Perpetrator's mother that LCPS would be conducting a Title IX investigation about the Stone Bridge HS incident. However, when the Title IX investigator visited the LCSO headquarters the next day for a scheduled meeting with the detective, a LCSO supervisor informed the Title IX investigator that the LCSO would not provide any information it had learned from the Stone Bridge HS incident to LCPS. However, the LCSO told the Title IX investigator that LCPS was free to conduct its own interviews.

On October 29, 2021, the Executive Director Chief of Schools sent an email that stated, "Because [the Perpetrator] now has a disposition in place, a recommendation for expulsion, pending due process, can now be entered into Phoenix."

F. Trials relating to the Stone Bridge HS Incident and the Broad Run HS Incident

On October 25, 2021, a trial was held in the J&DR Court about the Stone Bridge HS incident. After hearing testimony from Victim 1 and the LC'SO detective, the J&DR Court judge found the Perpetrator guilty on both charges of forcible sodomy.

The trial related to the Broad Run HS incident was scheduled for November 15, 2021, but, on the day of trial, the Perpetrator pleaded no contest to the sexual battery and abduction charges.

The sentencing for both incidents was scheduled for December 13, 2021, but then was moved to January 12, 2022, to provide time for a court ordered psychological evaluation of the Perpetrator and to locate a residential placement for the Perpetrator.

III. Analysis

A. Title IX

1. Generally

Title IX of the Education Amendments of 1972 ("Title IX") protects people from discrimination based on sex in education programs or activities that receive federal financial assistance. Discrimination covered by Title IX includes sexual harassment, the failure to provide equal athletic opportunity, sex-based discrimination in a school's courses and programs, and discrimination based on pregnancy. Title IX regulations were first issued in 1975 and were subsequently reissued and amended a number of times over the years, most notably in 2020.

Prior to 2020, the Title IX regulations issued by the U.S. Department of Education did not include specific requirements related to sexual harassment. The 2020 amendments to the Title IX regulations set forth the requirements for a school division's response to sexual harassment and added the minimum specific, legally binding steps that school divisions must take in response to notice of alleged sexual harassment.

Under the 2020 amendments to the regulations, sexual harassment is defined to include certain types of unwelcome sexual conduct, sexual assault, dating violence, and stalking.

The amended Title IX regulations also require school divisions to respond to an allegation of sexual harassment whenever any school employee has notice of sexual harassment. This includes notice to a teacher, an administrator, a school resource officer, or any other school employee. And a school division must respond if it has notice of any alleged misconduct that *could* meet the definition of sexual harassment, even if it is not certain whether the harassment has occurred.

Once a school division has actual notice of allegations of sexual harassment, it must “respond promptly in a manner that is not deliberately indifferent.” Regardless of whether a formal complaint of sexual harassment has been filed by a complainant, a school division’s Title IX coordinator must promptly contact the complainant to discuss the availability of supportive measures and to explain the process for filing a formal complaint. If a formal complaint is filed by the complainant, a school division must follow the Title IX grievance process specified by the 2020 regulations. If a complainant decides not to file a formal complaint, a Title IX Coordinator may have an obligation to file its own formal complaint if a school has compelling reasons to do so to satisfy its obligation to provide all students – not just the complainant – with an educational environment that does not discriminate based on sex.

A school division on notice of allegations relating to sexual harassment is required to offer a complainant “supportive measures” that “are designed to restore or preserve equal access to the [school division’s] educational program or activity.” The school division must consider the complainant’s wishes in determining which supportive measures to provide, and it may not provide supportive measures that “unreasonably burden[] the other party.” The school division should make this decision based on the “facts and circumstances of the situation.” Examples of supportive measures include “counseling, extension of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, [and] mutual restrictions on contact between the parties.”

A school division has the discretion to remove a respondent from its educational program on an emergency basis if the school determines that the respondent is a threat to others. Before making the decision to remove a respondent, the school division must “undertake[] an individualized safety and risk analysis, determine[] 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 provide[] the respondent with notice and an opportunity to challenge the decision immediately following the removal.” At all times, however, a school division must continue to meet its obligations to students under federal disability laws, including satisfying all special education requirements. A school district also must continue to follow state and local law as they relate to removal.

The 2020 amendments to the Title IX regulations require that a school division’s grievance process for formal complaints of sexual harassment include “reasonably prompt” time frames for concluding the process. However, the 2020 amendments to the regulations allow a temporary delay of the grievance process or a limited extension of time frames with good cause, which may include concurrent law enforcement activity.³³

³³ The Fourth Circuit recently confirmed that a school has a “duty to investigate” upon notice of the event. *Doe v. Fairfax Co. School Board*, 1 F.4th 257 (4th Cir. 2021). While the scope of this duty, particularly in the event of concurrent law enforcement investigation, is not entirely clear, the U.S. Department of Education’s Office of Civil Rights (“OCR”) has emphasized that delays in the context of the Title IX grievance process should be “temporary” and “limited,” not “open-ended.” 85 Fed. Reg. 30026, 30270. (May 19, 2020) Given that OCR discussed these delays only

2. Title IX, As Applied to the Stone Bridge HS Incident

At approximately 1:00 p.m., Victim 1 and her friend walked into the main office of Stone Bridge HS and informed an AP “what had happened.” The AP to whom the report was made alerted Victim 1’s “alphabet” AP about the incident. Victim 1 was upset and told both APs that she had been sexually assaulted and raped by the Perpetrator. The alphabet AP immediately informed the SRO, who commenced an investigation. At 1:22 p.m., Victim 1 told the school nurse that a male student “tried to choke” her, “flipped [her] over,” “pulled [her] pants down, and penetrated her anally. Victim 1 also told the nurse that the male student “tried to make me perform oral sex.” At 1:28 p.m., the principal of Stone Bridge HS informed his supervisors by email that Victim 1 “alleges another student attempted to rape her in the bathroom today.” At 4:09 p.m., the Superintendent informed the School Board, “This afternoon a female student alleged that a male student sexually assaulted her in the restroom.”

Based on the above information that was conveyed to Stone Bridge HS administrators and a school nurse, there can be no doubt that, on May 28, 2021, within an hour of the incident, LCPS had actual notice of allegations of sexual harassment as defined by Title IX. Regardless of whether LCPS was *certain* whether the alleged sexual harassment had occurred, it had notice of alleged misconduct that *could* meet the definition of sexual harassment. At that point, LCPS had an obligation to respond promptly to the allegation in a manner that was not deliberately indifferent, notwithstanding the fact that the LCSO was investigating the incident. Regardless of whether a formal complaint of sexual harassment had been filed, or could be filed, Title IX imposed upon LCPS the obligation to have its Title IX Coordinator make an initial assessment of the allegations for Title IX applicability and promptly contact Victim 1 or her family to discuss the availability and need for supportive measures and to explain the process for filing a formal complaint. Counsel found no evidence that this occurred.⁴²

It does not appear that LCPS considered whether it should commence a Title IX investigation for almost three months when, on August 17, 2021, the Perpetrator’s mother called LCPS to ask where the Perpetrator would be enrolled for the upcoming school year, which, at that point, was scheduled to start in a little over a week.

Over the next few days in August, there was much debate at the Central Office level about whether LCPS had sufficient information to start a Title IX investigation. Most of that discussion centered on whether *attempted* sexual assault gave rise to a Title IX investigation, as

in the context of the Title IX grievance process, it is Counsel’s view that there should be no or very little delay in the initial assessment of the claim for Title IX applicability, the offering of supportive measures, or informing complainant of her rights to file a formal complaint, and only a short delay in any investigative activity.

⁴² It may have been that the conflict with Victim 1’s parents on May 28, 2021, and thereafter, caused LCPS administrators to be skeptical that Victim 1’s parents would be supportive of any contact from LCPS, but the obligation for LCPS to discuss supportive measures and the process for filing a formal complaint remained.

opposed to an allegation of *actual* sexual assault. This overly restrictive view of Title IX appears to have bordered on the theoretical and was undertaken without the benefit of any information about what had happened. Moreover, for the purposes of the applicability of Title IX, attempted sexual assault is treated the same as sexual assault.³³

Instead of waiting for the LCSO to investigate, at the time it learned of Victim 1's allegations on May 28, 2021, LCPS's Title IX Coordinator was required to make an initial assessment to determine whether the alleged misconduct was student-related and whether it would constitute sexual assault that violated Title IX or whether the conduct should be addressed through another disciplinary mechanism.

Had the Title IX Coordinator engaged in this initial assessment process – instead of ceding responsibility to the LCSO – it should have learned from talking with the AP who took the report or with the nurse who met with Victim 1, that Victim 1 had made clear allegations of sexual assault or rape, triggering LCPS's obligation to promptly offer Victim 1 supportive measures and to explain the process for filing a formal complaint.

Even if LCPS reasonably believed that it did not have sufficient information to make a Title IX initial assessment, ownership of the process and responsibility for following up about the incident seems to have been lost until the Perpetrator's mother flagged the issue almost three months later. This reactive approach to its Title IX responsibilities seems to have been caused by LCPS's overly deferential approach to the LCSO and its investigation, which left LCPS to become exclusively reliant on the LCSO to affirmatively provide LCPS with information about the incident. Instead of relying solely on the LCSO to provide information about its investigation, it would have been prudent for LCPS to assign a Title IX investigator to the incident and to charge the investigator with taking affirmative steps to keep informed about the investigation and any charges that may be filed, and to follow up with the LCSO promptly and repeatedly, as the obligation remained with LCPS to conduct its own investigation, regardless of whether the LCSO was conducting an investigation.

Counsel learned during the investigation that LCPS administrators did not begin investigating Victim 1's allegations because of their belief that LCPS' MOU with the LCSO prevented them from doing so, and, since they could not investigate the incident, they did not believe that they had enough information to commence a Title IX investigation. Putting the issue of the MOU aside (which is discussed more completely below), even if LCPS did not have enough information to *commence* the grievance process, at a minimum, it had more than sufficient information to put it on notice that the alleged conduct qualified as sexual assault,

³³ According to CFR 106.30, harassment is "[s]exual assault" as defined in 20 U.S.C. 1092(f)(6)(A)(v), which defines sexual assault as "an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation." The FBI includes attempted sexual assault in its Uniform Crime Reporting System. <https://ucr.fbi.gov/crime-in-the-u.s/2019/crime-in-the-u.s.-2019/topic-pages/rape>.

creating an obligation to promptly contact Victim 1 and her family to discuss the availability of supportive measures and to explain the process for filing a formal complaint.

3. Necessity of a Threat Assessment After the Stone Bridge HS Incident

Counsel was asked to consider whether LCPS should have conducted a threat assessment of the Perpetrator, presumably before involuntarily transferring him to Broad Run HS. The short answer is, yes. However, Counsel cannot conclude that a threat assessment would have prevented the Broad Run HS incident, in part, based on the individual, [REDACTED] relationships between the Perpetrator and Victim 1 and Victim 2. But the process, at the very least, could have helped LCPS identify appropriate supportive measures for Victim 1 after the Stone Bridge HS incident, and it may have identified any conditions of, or protocols relating to, the Perpetrator's placement at Broad Run HS.

The 2020 amendments to Title IX feature many principles of threat assessments. As discussed, when sexual harassment is alleged, school districts must provide supportive measures to the alleged victim, which could include contact restrictions, security escorts, referrals to supportive services, altering school schedules, and the emergency removal of the respondent. Before a respondent – such as the Perpetrator – can be removed from a school division's educational program or activity on an emergency basis, however, the school division is required to conduct an individualized safety and risk analysis to determine whether an immediate threat to the physical health and safety of any student arising from the allegations of sexual harassment justifies removal. As part of this process, the school division is required to provide the respondent with notice and an opportunity to immediately challenge any removal decision.

LCPS's existing threat assessment process can be used both to evaluate the supportive measures that are appropriate for a specific situation that involves sexual assault, as well as to conduct the individualized safety and risk analysis in evaluating the necessity of removal and any conditions associated with a corresponding placement in another school or educational program.³⁴

In Virginia, school boards are required to adopt "policies for the establishment of threat assessment teams . . . consistent with the model policies developed by the Virginia Center for School and Campus Safety . . ." Va. Code § 22.1-79.4. The threat assessment team must, in turn, implement the policies adopted by the school board, including the requirement that the team include a variety of individuals, including those with expertise in counseling, instruction, school administration, and law enforcement.

Virginia's model policies regarding threat assessment provide definitions of "aberrant behavior" or "threats" that might trigger the need for the threat assessment team to intervene. This includes any "behavior that indicates that an individual may pose a danger to the safety of

³⁴ The threat assessment also must follow LCPS policies, special education law, and state law regarding removal and any alternative educational placement.

the school staff or students through acts of violence or other behavior that would cause harm to self or others.”

Using the model policies as a guide, LCPS has implemented Policy 8290 and Regulation 8290 relating to threat assessments. Policy 8290 requires each LCPS school to create a threat assessment team. Regulation 8290 outlines how threat assessment teams should evaluate a threat assessment and manage any identified threat.

No threat assessment of the Perpetrator was conducted after the Stone Bridge HS incident. One of the reasons identified by administrators for not conducting a threat assessment was because they believed that the process would have required some level of an investigation, which LCPS believed was solely within the jurisdiction of the LCSO. However, Regulation 8290 does not prevent LCPS from conducting a threat assessment in this situation, and a threat assessment team could have relied on information that it learned from sources other than Victim I and the Perpetrator, including information from the AP who took the report and the nurse who spoke with Victim I. Also, since the SRO is a member of the threat assessment team, law enforcement inherently is involved in the threat assessment and would have been able to participate in the process and ensure that the assessment did not impact the criminal investigation.

In the case of the Stone Bridge HS incident, LCPS could have benefited from the use of the threat assessment team both to consider supportive measures for Victim I and to evaluate the decision to remove the Perpetrator from Stone Bridge HS. Even if the threat assessment did not result in consideration of distance/virtual learning or placement in a specialized school designed to educate students who presented potential safety concerns, the assessment could have helped determine the conditions of, or protocols relating to, the Perpetrator’s continued education.

4. Title IX, As Applied to the Broad Run HS Incident

While the Title IX investigation of the Broad Run HS incident is outside the scope of Counsel’s investigation, Counsel has learned that the Title IX process has begun and is proceeding with due course.

5. Additional Thoughts about Title IX at LCPS

During the investigation, Counsel learned that, for SY 2021-22, LCPS has instituted a new process for school-based administrators to report incidents that may be considered Title IX issues. Administrators fill out a Google Docs form, which automatically is transmitted to the Title IX Coordinator and others to determine if the alleged conduct implicates Title IX.

Since the beginning of SY 2021-22, 159 reports have been submitted by school-based administrators for evaluation as Title IX issues. None of the 159 reports have been determined to meet the threshold to open a Title IX investigation. While review of the 159 reports is beyond the scope of this investigation, Counsel has some concern that the Title IX office may be employing a too restrictive interpretation of Title IX. It is Counsel’s understanding that, since the 2020

Amendments to Title IX regulations, LCPS has opened Title IX investigations for only the Stone Bridge HS incident and the Broad Run HS incident.

B. MOU Between LCPS and LCSO

1. Generally

During Counsel's interviews, it became clear that many LCPS administrators believe that they are not permitted to investigate certain school-related allegations that have been referred to the LCSO for investigation. As noted above, this view seems to be grounded in experiences certain administrators have had with officers from the LCSO, some of whom allegedly have threatened LCPS administrators with criminal charges for interfering with LCSO investigations. During interviews with LCPS staff, Counsel learned that one basis of the belief that the LCSO investigation takes precedence comes from the Memorandum of Understanding ("MOU") between LCPS and the LCSO.

Generally, MOUs between law enforcement and school divisions constitute agreements about how the two governmental agencies will work together on issues concerning student conduct and law enforcement. Virginia law requires that "school boards and local law enforcement agencies [] review and amend or affirm memorandums of understanding at least once every two years, or at any time upon the request of either party." Virginia Code § 22.1-280.2-3.

In May 2017, the Virginia Department of Criminal Justice released an updated Virginia School-Law Enforcement Partnership Guide, which was meant to serve as a "resource for members of local law enforcement and school communities who are directly involved with implementing school-law enforcement partnerships." The 2017 Guide explains that the criminal and disciplinary processes should operate in a parallel fashion for certain offenses.

A model MOU⁴⁵ was released as part of the 2017 Guide and an updated Model MOU⁴⁶ was released in November 2020. The updated model MOU⁴⁷ does not limit a school's ability to investigate, as needed, for Title IX or other disciplinary processes. The updated model MOU⁴⁸ also outlines statutory responsibilities, including when law enforcement must inform the principal and the superintendent when a student commits certain offenses.

Two different MOUs applied to the incidents at Stone Bridge HS and Broad Run HS. A MOU that was signed in November 2015 (the "2015 MOU") was in place on May 28, 2021, the date of the Stone Bridge HS incident. A MOU that was signed in July 2021 (the "2021 MOU") was in place on October 6, 2021, the date of the Broad Run HS incident, and it continues to apply.⁴⁹ Both the 2015 MOU and the 2021 MOU state that they are "meant to be an accompaniment to the Virginia School Law Enforcement Partnership Guide."

⁴⁵ The requirement under the Code of Virginia that school districts and law enforcement review in-place-MOUs once every two years became effective in July 2020.

2. 2015 MOU As Applied to the Stone Bridge HS Incident

The 2015 MOU allows school-based administrators to “conduct a brief preliminary inquiry when reasonable suspicion exists that a student has violated a reportable criminal offense” – including sexual assault – before “immediately report[ing] the matter to the SRO.” Thereafter, “school personnel should cooperate with law enforcement authorities in further investigating criminal acts which occur” on LCPS property. School based SROs are permitted to interview victims and witnesses of crimes that occur in the secondary schools, and the SROs “shall keep the Principal apprised of these interviews.” The 2015 MOU also requires that “the Principal shall be notified of any enforcement actions by the SRO as soon as is practical” and that the SRO “coordinate activities so that coordination between agencies is cooperative and in the best interest of the school and public safety.” Finally, the 2015 MOU requires that the “[a]rrest of students . . . for incidents related to school activities shall be reported fully to the Principal as soon as possible after the arrest.”

While LCPS administrators appear to have had some less than positive experiences with the LCSO relating to its investigations of potential criminal charges on LCPS property, the 2015 MOU did not completely prohibit LCPS from investigating the Stone Bridge HS incident or from following up with the LCSO after it had begun its investigation. However, even if LCPS believed that it was necessary for LCSO to take the lead on investigating Victim 1’s allegations, at all times, the obligation remained with LCPS to conduct an initial assessment of Victim 1’s allegations to determine if Title IX applied and, if it did, to offer supportive measures and to inform Victim 1 and her family of their right to file a Title IX complaint. Thereafter, LCPS may have been able to temporarily delay its investigation, but it was not required to wait until LCSO had completed its investigation.

3. 2021 MOU

The 2021 MOU contains much of the obligations and responsibilities of the 2015 MOU with a notable difference. The 2021 MOU expressly prohibits a school from continuing its “review” as “soon as it becomes evident that a reportable offense may have occurred.” Instead, school administrators are required to “report the potential offense to law enforcement.”

The MOU, however, is silent as to what a “review” includes, and the MOU does not address when LCPS can re-institute its “review” or otherwise satisfy its obligations under Title IX or any other binding authority.³⁶ As discussed above, on this score Title IX is clear: once a school division has actual notice of allegations of sexual harassment, it must “respond promptly in a manner that is not deliberately indifferent.” Offering supportive measures and informing the complainant of the right to file a formal complaint cannot be delayed. While under the applicable regulations the Title IX *grievance* process may be delayed “temporarily” for law enforcement activity, any delay must be short.

³⁶ A MOU outlines the joint responsibilities of school divisions and law enforcement, but it does not carry the same binding effect as state or local law. In the case of conflicting state and local law, Title IX controls and preempts any conflicting state or local law. 34 CFR § 106.6(h).

While the LCSO now appears to be cooperating with LCPS's Title IX investigation into the Broad Run HS incident, the LCSO has refused to cooperate with LCPS's Title IX investigation into the Stone Bridge HS incident. LCPS should strongly consider revisiting the language of the 2021 MOU to clarify that it has the authority to satisfy its obligations under Title IX.

IV. Recommendations

A. LCPS Progress to Date

During the investigation, Counsel learned that, beginning after May 28, 2021, LCPS began to improve its policies and processes to better comply with the 2020 Amendments to Title IX. These steps have included:

- (1) Updating LCPS's website to explain the Title IX process and sharing the site with principals.
- (2) Beginning the process of updating LCPS policies and regulations to ensure compliance with the 2020 Amendments to Title IX regulations.
- (3) Updating LCPS policies and regulations expressly to authorize the exercise of authority to reassign a student with pending serious criminal charges to an alternative educational program as permitted by Virginia law.
- (4) Creating a Title IX reporting form and sharing it with school administrators.
- (5) Beginning the process of working with the LCSO to draft a proposal on how LCSO and LCPS can conduct parallel criminal and Title IX investigations.
- (6) Developing space in an alternative school, The North Star School, where students who may pose safety risk to other can be placed and educated.

B. Further Work Remains to be Done

While improvements have been made, there is further work that should be done to better address the requirements of Title IX. These steps include:

- (1) Conducting an immediate initial assessment of allegations that may involve Title IX issues.
- (2) In the event concurrent law enforcement activity prevents immediate access to the complainant and the respondent, gathering all available evidence from other sources to make the initial assessment.
- (3) Delegating clear responsibility and accountability for completing the initial assessment as well as as-needed follow up with law enforcement.
- (4) Training employees involved in the Title IX process about the scope of Title IX, which includes claims of conduct that *could* satisfy the definition of sexual harassment, broadly understood, even if it is not certain that the harassment has occurred. As part of this process, it should be emphasized that the sufficiency of the evidence should be weighed during the grievance process, not during the initial assessment.

- (5) In the event a Title IX issue has been identified, reaching out to complainants to offer supportive measures and to educate them on their right to file a Title IX Complaint.
- (6) Timely follow up with juvenile court authorities in instances where staff becomes aware that a student has been charged with the serious criminal offenses referenced in Va. Code 22.1-277.2:1.
- (7) Convening threat assessment teams in appropriate situations to both provide input on appropriate supportive measures and to evaluate risk issues, including any conditions of, or protocols relating to, placements in alternate educational settings.
- (8) Timely completion of the Title IX process.
- (9) Evaluating conflict of interest issues in LCPS's current Title IX process. As currently constituted, a staff member who is tasked with reviewing a Title IX submission from a school-based administrator also may be assigned to investigate the report, which could create a conflict of interest. 34 C.F.R. § 106.45(b)(1)(iii). Similarly, the Deputy Title IX Coordinator also is both a Title IX investigator and responsible for discipline at the central office level for issues referred out of the Title IX process, which could create a conflict of interest as a Title IX investigator must not also be a decision maker.
- (10) Finalizing and approving Policies 8030 and 8035 relating to Title IX investigations.
- (11) Meeting with the LCSO to finalize a process for conducting parallel investigations.
- (12) Revisiting the language of the 2021 MOU to clarify that LCPS has the authority to satisfy its obligations under Title IX and the disciplinary process.

This completes Counsel's report on the issues it was asked to address by the School Board. Counsel is available for further discussion or follow up on any of the issues addressed in this report.