

**VIRGINIA:**

**IN THE CIRCUIT COURT OF LOUDOUN COUNTY**

**ERIN BROOKS,**

**Plaintiff,**

**v.**

**LOUDOUN COUNTY SCHOOL BOARD,**

**Serve via private process service:**

**21000 Education Court**

**Ashburn, Virginia 20148,**

**and**

**DIANE MACKEY, Principal, in her official capacity**

**and individually,**

**Serve via private process service:**

**21000 Education Court**

**Ashburn, Virginia 20148,**

**Defendants.**

**Civil Action No. \_\_\_\_\_**

**COMPLAINT**

**COMES NOW** the Plaintiff, Erin Brooks, by counsel, and as her Complaint against the Loudoun County School Board and Diane Mackey, states as follows:

**PARTIES**

1. The Plaintiff, Erin Brooks (“the Plaintiff”) is a natural person, who at all times relevant hereto resided in Loudoun County, Virginia.

2. The Defendant Loudoun County School Board (“Defendant School Board” or “LCSB”) is the official “body corporate” of Loudoun County Public Schools (“LCPS”) pursuant to Virginia law. Va. Code Ann. §§ 22.1-28; 22.1-71.

3. Further, LCSB Policy 1010 (School Division Legal Status) states “(t)he supervision of schools in each school division is vested in a school board selected in accordance with the applicable provisions of the Code of Virginia.”

4. The Defendant, Diane Mackey (“Defendant Mackey”) is a natural person, is a principal of a school maintained by LCPS, and at all times relevant hereto resided in Loudoun County, Virginia.

### **JURISDICTION AND VENUE**

5. Jurisdiction is proper pursuant to Va. Code Ann. §§ 8.01-184, 8.01-620, 17.1-513 22.1-28 and 22.1-71.

6. Venue is proper pursuant to Va. Code Ann. § 8.01-261.

### **INTRODUCTION**

7. On at least one occasion, an Honorable Judge of this Court has found the actions of Defendant School Board against its teachers to be “unnecessary” and “vindictive” in a case where a teach dared question the actions and/or policies of Defendant School Board and/or LCPS. Cross v. Loudoun Cty. School Board, et al., Record No. CL21-3254 (June 8, 2021).

8. This cause once again challenges the unnecessary and vindictive actions of Defendant School Board, this time inflicted by these politicians and their agents on a victim of sexual assault.

9. The case at bar involves the Plaintiff being the victim of ongoing instances of sexual assault and LCPS personnel failing to protect the Plaintiff from the same. Even worse, the Plaintiff was victimized again for protecting herself from harm when Defendant School Board and Defendant Mackey retaliated against the Plaintiff for her speaking out against the

travesty done to her and working to protect herself when LCPS would not. This retaliation came in the form of harming the Plaintiff in her employment and defaming her in the media.

### **COMMON FACTS**

10. The Plaintiff is a Learning Specialist currently employed as a lead teacher in a special education classroom at a school maintained by LCPS.

11. Beginning in February 2022, a student began grabbing her breasts, buttocks, and pubic area dozens of times each day.

12. Relying on her 14 years of experience and training in special education, the Plaintiff tried multiple behavior modification strategies to get the student to stop sexually assaulting her.

13. The Plaintiff was unsuccessful in making the sexual assault stop.

14. On several occasions during February and March 2022, the Plaintiff emailed and met with administrators at the school at which she was employed, including, Ryan Mouw (“Mr. Mouw”), Vice Principal, Alison McLaughlin (“Ms. McLaughlin”), Special Education Dean, Jennifer Hedges (“Ms. Hedges”), Academic Dean, and Defendant Mackey, for guidance and support in addressing the ongoing sexual assaults.

15. The Plaintiff also reached out to Elizabeth Miller, the Intellectual Disabilities Consultant for LCPS (“Ms. Miller”).

16. The Plaintiff clearly and unambiguously articulated her professional opinion to the administrators that the student understood the nature of the actions and was intentionally sexually assaulting her, other teachers, and students.

17. Based on her experience and several months of observing the student, the Plaintiff further provided evidence to support the conclusion that the behavior was intentional, was

indicative of something possibly having happened to the student, and not a manifestation of the student's disability.

18. Further, the Plaintiff told the administrators that she was a victim of sexual assault previously and that the actions of the student were retraumatizing her and causing her extreme emotional distress.

19. For example, the Plaintiff was experiencing nightmares and panic attacks.

20. However, despite her repeated attempts to stop the assaults and her pleas to her superiors and colleagues for help, the Plaintiff was repeatedly dismissed and ignored by LCPS personnel who were in positions that could have stopped the assaults.

21. For example, when requested by the Plaintiff to help her stop the assaults, Mr. Mouw dismissively told the Plaintiff to "talk to the parents."

22. When LCPS personnel did engage with the Plaintiff on the assaults, they would make ridiculous suggestions to the Plaintiff that would likely have no impact on the student's actions.

23. For example, On March 1, 2022 Ms. Hedges gave the Plaintiff a piece of cardboard measuring about a square foot with a picture of a "quiet hand" on it to hold up to the student when he came at her.

24. On March 7, 2022, the Plaintiff met with Ms. Miller, Ms. Hedges, and Ms. McLaughlin to discuss the situation.

25. When asked if it was her opinion that the behavior was a "purposeful and sexually motivated act," the Plaintiff answered in the affirmative.

26. LCPS Personnel still did nothing to stop the assaults from occurring.



27. On March 11, 2022, the Plaintiff emailed Lisa Boland (“Ms. Boland”), the Title IX Compliance Officer for LCPS at the time (now Chief Human Resources Officer and Talent Development) to report the sexual assault and harassment inflicted on her by the student.

28. The Plaintiff believed this constituted the filing of an official Title IX complaint pursuant to Loudoun County School Board Policy Sec. 7014, entitled “Environments Free From Harassment, Discrimination, and Abuse.”

29. Ms. Boland replied that she would “talk it over” with Justin Donovan (“Mr. Donovan”), an Alternate Compliance Officer.

30. On March 14, 2022, the Plaintiff emailed Defendant Mackey about concerns for her co-workers who were being repeatedly subjected to conduct from the student similar to what the Plaintiff experienced.

31. The Plaintiff attached a link to a data file documenting the instances of sexual assault and harassment being inflicted on the Plaintiff and others.

32. Defendant Mackey initially ignored the Plaintiff’s documentation and did not open the file until March 23, 2022.

33. On March 15, 2022, the Plaintiff met with Defendant Mackey to again discuss the ongoing situation.

34. It was during this meeting that Defendant Mackey gave the Plaintiff another example of the ridiculous suggestions LCPS personnel made to the Plaintiff to stop the sexual assaults.

35. Specifically, Defendant Mackey suggested ordering an apron for the Plaintiff to “slow down the penetration” when the student reached for her breasts and genitals.

36. Later that same day, Defendant Mackey sent the Plaintiff emails with links to different aprons asking her to select the one she preferred.

37. On March 16, 2022, the Plaintiff contacted Mr. Donovan to follow-up on the Title IX complaint.

38. Mr. Donovan said he had spoken with Ms. Boland and that they “didn’t know what to do here.”

39. The Plaintiff asked Mr. Donovan, “Where do I go to get help so I can go to school without getting touched?”

40. In another dismissive response to her pleas for help, Mr. Donovan instructed the Plaintiff to “work with school staff.”

41. On March 21, 2022, the Plaintiff emailed Ms. Miller, desperate for help with the situation.

42. Ms. Miller provided yet another dismissive response, stating “hang in there.”

43. On March 22, 2022, the Plaintiff met with Defendant Mackey to discuss the status of her employment and the results of a classroom observation by Defendant Mackey of the Plaintiff earlier in the same month.

44. The Plaintiff was told she received all excellent marks and that there were no recommendations for changes.

45. When Defendant Mackey asked about the situation with the student, the Plaintiff informed her again that it was not going well and that the targeted touching multiple times a day was re-traumatizing her.

46. Defendant Mackey again dismissed the Plaintiff’s pleas for help and responded that she “didn’t believe it was sexual.”

47. It was at that point the Plaintiff came to the realization that LCPS personnel, including Defendant Mackey and the other individuals involved, would do nothing to protect her from further sexual assaults.

48. Due to the failure of LCPS personnel to protect her, and based on her knowledge Defendant School Board's past handling of sexual assault matters, on or about March 22, 2022 the Plaintiff emailed from her LCPS email account emails and documents related to how the administrators and Title IX officers were handling her sexual assault and harassment complaints to the personal email account of Laurie Vandermeulen ("Ms. Vandermeulen").

49. Ms. Vandermeulen, as a teaching assistant to the Plaintiff and is a "school official" with a legitimate educational interest in the information concerning the Plaintiff being a victim of sexual assaults pursuant to LCSB Policy Sec. 8640(4).

50. Further, Ms. Vandermeulen was either copied on, aware of, or a recipient of the emails and documents forwarded to her personal email already.

51. The Plaintiff did not disclose any personally identifiable information about the student to anyone other than school officials with a legitimate interest in information contained in an educational record.

52. On March 22, 2022, during public comment of one of Defendant School Board's regularly scheduled business meetings, a Loudoun resident spoke about the sexual harassment of teachers at the school where the Plaintiff was a teacher.

53. The Plaintiff does not know the speaker and did not share with him any details of her situation.

54. Subsequent thereto on March 23, 2022, the Plaintiff was summoned to the office to meet with Defendant Mackey and Mr. Ryan.



55. Defendant Mackey gave the Plaintiff a business card with information for LCPS mental health services.

56. Defendant Mackey then attempted to cover up and “revise” her history of disregarding the sexual assaults on the Plaintiff by asking the Plaintiff why the Plaintiff had not told her more about the sexualized behaviors of the student.

57. The Plaintiff was astonished that Defendant Mackey would make such a statement considering the Plaintiff had been pleading with Defendant Mackey to help her stop the assaults for weeks.

58. On or about March 24, 2022 Loudoun County Department of Family Services, Child Protective Services (“CPS”) came to the school where the Plaintiff was employed.

59. The purpose of their visit was to follow-up on report the Plaintiff made regarding concerns the student assaulting her was being abused and/or neglected pursuant to Va. Code Ann. § 63.2-1509.

60. The Plaintiff saw the CPS representative speak with Defendant Mackey.

61. When the Plaintiff asked about the CPS visit, Defendant Mackey said she told CPS that because the student was absent that day, they should come back another time.

62. On March 25, 2022, the Plaintiff filed another Title IX complaint, this time using the link on the LCPS website.

63. Thereafter, Defendant Mackey came to the Plaintiff’s classroom seven to nine times per day to observe the Plaintiff.

64. On March 29, 2022, Defendant Mackey entered the Plaintiff’s classroom and asked that she get her computer and come to the administrative office of the school.



65. The Plaintiff went to the office, and Alix Smith (“Ms. Smith”) from the LCPS Department Human Resources and Talent Development (“HRTD”) was present.

66. The Plaintiff asked Defendant Mackey why Ms. Smith was there.

67. Defendant Mackey replied that she “had no idea” which was false.

68. In the meeting with Ms. Smith, the Plaintiff asked about what was being done to address the situation with the student who had been repeatedly sexually assaulting her.

69. Ms. Smith stated she did not know anything about that situation and that she was there to discuss emails.

70. The Plaintiff stopped the meeting at that point and left the office.

71. On March 29, 2022, the Plaintiff was sent, via certified mail, a letter stating that HRTD had received a complaint alleging that the Plaintiff had disclosed confidential student information in violation of Defendant School Board’s policies, and that HRTD had opened an investigation into the matter.

72. On April 3, 2022, the Plaintiff received a letter via electronic delivery from Ms. Smith requesting a time to continue the interview which the Plaintiff had previously terminated on March 29, 2022.

73. On April 18, 2022, the Plaintiff received a letter informing her that her Title IX complaint was dismissed, and her appeal of the same was later denied as well.

74. On or about April 24, 2022, the Plaintiff requested leave from her employment because she had been subpoenaed to appear before the Special Grand Jury initiated by Virginia Attorney General Jason Miyares pertaining to Defendant School Board and Defendant Mackey demanded a copy of the subpoena.

75. On April 26, 2022, the Plaintiff testified before the Special Grand Jury initiated by Virginia Attorney General Jason Miyares pertaining to Defendant School Board.

76. On May 18, 2022, the Plaintiff received a letter at 8:30 a.m. via electronic delivery from Ms. Smith regarding the findings in the investigation into allegations the Plaintiff had disclosed confidential student information.

77. The investigation concluded that the Plaintiff had violated LCSB Policy Sec. 7566 and LCSB Policy Sec. 8640, that the report would be placed in her employee file, and that she would need to complete additional training on privacy policies.

78. At 11:30 am on May 18, 2022, the Plaintiff was summoned to a meeting with Defendant Mackey, Mr. Ryan, and Lisa Gray (“Ms. Gray”) from HRTD, to review the findings of the investigation.

79. In addition, despite her profuse praise of the Plaintiff only a few weeks prior, Defendant Mackey gave the Plaintiff an employment evaluation with a score of 1.75, an “unacceptable” rating.

80. Defendant Mackey further stated she was recommending the Plaintiff’s employment contract with LCPS not be renewed for the 2022-2023 school year, and the Plaintiff received notice her contract was officially not renewed June 13, 2022.

81. On June 7, 2022, the Plaintiff spoke during public comment at Defendant School Board’s regular business meeting.

82. At said meeting the Plaintiff stated, in pertinent part:

“I’m Erin Brooks and I’m an LCPS teacher and parent which makes my primary goal child safety and well-being. This year I had a student who was exhibit overly-sexualized behaviors on a repeated and consistent basis. Fondling, groping, sexualized facial and hand gestures towards me, other teachers and students. On March 22, your board meeting, a community member spoke highlighting a lack of response to this issue by administration, Title IX and

Human Resources, and your response was to launch a smear campaign against me....My reviews have been stellar. I won the excellence and special education teaching award last year. Now I've been re-labeled by you as unacceptable. And Mr. Ziegler, you will not renew my contract next school year. I'm thankful that I was subpoenaed to a special grand jury as a witness who testified to egregious decisions and behaviors. Please stop with the intimidation, stop with the defamation, stop trying to cover this up face the issues head on, I'm doing my job please do yours."

83. On the evening of June 9, 2022, the Plaintiff received a call from Alison Sherman ("Ms. Sherman") in HRTD asking her to go to the LCPS administration building on Friday, June 10, 2022.

84. Upon arriving at the LCPS administration building, staff was unaware of a scheduled meeting for the Plaintiff.

85. Eventually, the Plaintiff was informed that a new investigation had been opened into allegations she violated LCSB Policy Sec. 7560 (Professional Conduct) and LCSB Sec. 8640 (Disclosure of Personally Identifiable Information) and that she was on administrative leave pending the outcome of the investigation.

86. On June 10, 2022 Defendant School Board made false and defamatory statements about the Plaintiff in a statement released to multiple media sources.

87. The statements were published in at least two stories on online media such as <http://wtop.com> and <http://virginianewstime.com> and consisted of the following:

"While we encourage all teachers and students to report any concerns about inappropriate toughing or sexual assault to the appropriate authorities, we expect staff to do so in the process laid out in LCPS policy that is consistent with our need to protect the privacy of our students as well...These teachers improperly distributed student records without the consent of the family and without the knowledge of school staff for reasons that are unrelated to their job duties and this profound breach of trust to their students has been addressed appropriately by LCPS."



88. A true and accurate copy of the published statements are attached hereto and incorporated herein as Exhibits A and B.

89. Although Defendant School Board statements do not identify the Plaintiff by name, the news stories name the Plaintiff as the subject of the story and the Defendant School Board's statements were plainly about the Plaintiff.

90. On June 10, 2022 Defendant Mackey made false and defamatory statements about the Plaintiff in an email she sent at 4:34 p.m.

91. The statements were published to the entire staff of the school at which the Plaintiff is employed, and consisted of the following:

“...It saddens me to have to send this email. However, because private information about one of our students was shared publicly by two of our employees, the school district has released a statement with permission of the parents. I thought you should be made aware.”

92. A true and accurate copy of the published statements are attached hereto and incorporated herein as Exhibit C.

93. Although Defendant Mackey's statements do not identify the Plaintiff by name, the email links to the the news story published by <http://wtop.com> which specifically names the Plaintiff as the subject of the story and clearly the Plaintiff is one of the employees referred to in Defendant Mackey's statements.

94. The Plaintiff has interviewed with two different LCPS schools for new employment and received no follow-up response.

#### **DEFENDANT SCHOOL BOARD'S POLICIES AND APPLICABLE LAWS**

95. LCSB has adopted several policies and regulations providing for the equitable, safe, and inclusive working environment for employees free from all forms of harassment and discrimination.



96. These policies and regulations address the responsibilities of school-based and central office staff and administration with respect to responding to employee complaints of sex discrimination, sexual harassment, and abusive behavior that interferes with the work environment.

97. LCSB Policy Sec. 1040 entitled *Equal Opportunity For Equitable, Safe And Inclusive Environment* states:

“The Loudoun County School Board is committed to providing for an equitable, safe, and inclusive learning and working environment.

The Loudoun County School Board affirms a commitment to this principle for all persons regardless of race, color, national origin, religion, sex, pregnancy, childbirth or related medical conditions, sexual orientation, gender identity, marital status, disability, age, or genetic information.

It is the intent of the School Board of Loudoun County that every policy, practice, and procedure shall reflect this commitment. Behavior that is not unlawful may nevertheless be unacceptable for the educational environment or the workplace. Demeaning or otherwise harmful actions are prohibited, particularly if directed at personal characteristics, including, but not limited to socioeconomic level, sexual orientation, perceived sexual orientation, gender identity, or gender expression”

98. LCSB Policy Sec. 6120 regarding “wellness” states that LCPS is commitment to providing school environments that promote and protect children’s health, well-being, and ability to learn by supporting healthy eating, physical activity, and social emotional wellbeing.

99. Further, LCSB Policy Sec. 6120(H) states that “Departments and schools shall value the health and well-being of every staff member and shall plan and implement activities and policies that support personal efforts by staff members to maintain a healthy lifestyle.”

100. Mental and emotional wellness are specifically included in the definition of a healthy lifestyle.

101. LCSB Policy Sec. 7014 entitled *Environments Free From Harassment, Discrimination, and Abuse* states, “The Loudoun County Public Schools is committed to

maintaining a working and educational environment for employees and students which provides for fair and equitable treatment free from harassment and discrimination, including freedom from sex discrimination and sexual harassment.”

102. Additionally, the Policy prohibits abusive behavior that interferes with the work environment.

103. LCSB Policy Sec. 7014(A)(2)(b) requires any immediate supervisor or principal receiving an employee complaint of sexual harassment or discrimination to report it immediately to the Assistant Superintendent for HRTD.

104. Further, LCSB Policy Sec. 7014(B)(2) requires a supervisor receiving complaints of abusive behavior to take “reasonable care in addressing a complaint.”

105. LCSB Policy Sec. 7560, entitled *Professional Conduct*, states LCSB expectations that all staff are held to the highest standards of personal and professional conduct.

106. LCSB Policy Sec. 7560(A) requires employees “perform all assigned job duties in accordance with performance standards and job-specific requirements” and to “demonstrate a commitment to an inclusive, safe, and supportive work...environment.”

107. LCSB Policy Sec. 7560(B) reiterates the commitment to an equitable and inclusive work environment for employees.

108. LCSB Policy Sec. 7560(C) states “Employees are expected to establish and maintain appropriate physical, social and emotional boundaries with students. All forms of contact and communication with students must be transparent, accessible to supervisors and parents, nonsexual, unambiguous in meaning, and professional in reference and content.”

109. Further, LCSB Policy Sec. 7560(E) affirms that “nothing in this policy or any other policy shall be interpreted as abridging an employee’s First Amendment right to engage in protected speech...except as provided by law.”

110. LCSB Policy Sec. 8640 establishes guidelines for protecting the Personally Identifiable Information of students and what constitutes legal disclosure for access to education records consistent with Virginia and federal law.

111. The Family Educational Rights and Privacy Act (“FERPA”) (20 U.S.C. § 123g; 34 CFR Part 99) is a federal law that protects the privacy of student education records at all schools that receive federal funds under an applicable program of the U.S. Department of Education.

112. FERPA gives parents rights to inspect and review their student’s education records maintained by the school. Id.

113. Generally, schools may not disclose information in education records (or the personally identifiable information contained in them) without the written consent from the parent. Id.

114. FERPA defines an education record as “(t)hose records, files, documents, and other materials which- (i) contain information directly related to a student; and (ii) are maintained by an educational agency or institution or by a person acting for such agency or institution.” 20 U.S.C. § 123g. (a)(4)(A).

115. 34 CFR § 99.3 defines the term Personally Identifiable Information as including, but not limited to:

- A. The student’s name;
- B. The name of the student’s parent or other family members;



- C. The address of the student or student's family;
- D. A personal identifier, such as the student's social security number, student number, or biometric record;
- E. Other indirect identifiers, such as the student's date of birth, place of birth, and mother's maiden name;
- F. Other information that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty; or
- G. Information requested by a person who the educational agency or institution reasonably believes knows the identity of the student to whom the education record relates.

116. FERPA generally prohibits the release of educational records or Personally Identifiable Information without the written consent of the parent, however educational records may be disclosed without prior written consent to "other school officials, including teachers within the educational institution...who have been determined by such agency or institution to have legitimate educational interests..." 20 U.S.C. § 123g. (b)(1)(A).

117. Va. Code Ann. § 1-287 limits disclosure of any records concerning any particular student enrolled in a school consistent with FERPA.

118. Va. Code Ann. § 1-289 defines a "scholastic record" as "(t)hose records that are directly related to a student and are maintained by an educational agency or institution or by a party acting for the agency or institution. These include, but are not limited to, documentation pertinent to the educational growth and development of students as they progress through school, student disciplinary records, achievement and test data, cumulative health records, reports of assessments for eligibility for special education services, and Individualized Education Programs."



119. The use of technology by LCPS personnel to send emails and records is governed by LCSB Policy Sec. 7566 entitled *Employee Technology Acceptable/Responsible Use*.

120. LCSB Policy Sec. 7566 is devoid of any prohibition whatsoever against an LCPS employee using LCPS technology to send emails to their own personal email accounts or that of another LCPS employee, so long as it is “consistent with educational or instructional mission or administrative function...or for legitimate school business.”

121. LCSB Policy Sec. 7566 is devoid of any prohibition whatsoever against an LCPS employee using LCPS technology to send LCPS records to their own personal email accounts or that of another LCPS employee, so long as it is “consistent with educational or instructional mission or administrative function...or for legitimate school business.”

122. Defendant School board has demonstrably failed to follow and enforce its own policies and regulations, specifically LCSB Policy Sections 1040, 6120, 7014 and 7560 with respect to its handling of the repeated acts of sexual assault suffered by the Plaintiff while engaged in her employment with LCPS and retaliating against the Plaintiff for her March 11, 2022 Title IX complaint, her mandatory report to CPS pursuant to Va. Code Ann. § 63.2-1509, the March 22, 2022 public comment by a Loudoun resident at Defendant School Board’s meeting, the Plaintiff’s March 25, 2022 Title IX complaint, her April 26, 2022 Special Grand Jury testimony, and her public comment at the June 7, 2022 Defendant School Board’s meeting.

123. Defendant School board has misused and misapplied FERPA and LCSB Policy Sec. 8640 to conduct sham investigations against the Plaintiff to retaliate against the Plaintiff for her March 11, 2022 Title IX complaint, her mandatory report to CPS pursuant to Va. Code Ann. § 63.2-1509, the March 22, 2022 public comment by a Loudoun resident at Defendant School Board’s meeting, the Plaintiff’s March 25, 2022 Title IX complaint, her April 26, 2022 Special

Grand Jury testimony, and her public comment at the June 7, 2022 Defendant School Board's meeting.

## **COUNT I**

### **(Declaratory Judgment – Defendant School Board)**

124. The Plaintiff incorporates the allegations in paragraphs 1 through 123 above.

125. An actual justiciable controversy ripe for adjudication exists between the parties, and the Plaintiff requests this Court enter declaratory judgment establishing:

A. Defendant School Board failed to follow LCSB Policy Sec. 1040 by its acts and omissions set forth in paragraphs 20-26, 29, 32-36, 38-42, 45-46, 54-56, 63-73, 76-80, 86-89 and 90-93 above;

B. Defendant School Board failed to follow LCSB Policy Sec. 7014 by its acts and omissions set forth in paragraphs 20-26, 29, 32-36, 38-42, 45-46, 54-56, 63-73, 76-80, 86-89 and 90-93 above;

C. Defendant School Board failed to follow LCSB Policy Sec. 7560 by its acts and omissions set forth in paragraphs 20-26, 29, 32-36, 38-42, 45-46, 54-56, 63-73, 76-80, 86-89 and 90-93 above.

126. Defendant School Board's position is to the contrary.

127. The Plaintiff is entitled to an award of attorneys' fees and costs pursuant to Va. Code Ann. § 8.01-190.

**WHEREFORE**, the Plaintiff requests this Honorable Court enter declaratory judgment as set forth above, for an award of attorneys' fees and costs and for such further relief as the nature of this cause may require.

## **COUNT II**

### **(Declaratory Judgment –Defendant Mackey)**

128. The Plaintiff incorporates the allegations in paragraphs 1 through 127 above.

129. An actual justiciable controversy ripe for adjudication exists between the parties, and the Plaintiff requests this Court enter declaratory judgment establishing:

A. Defendant Mackey failed to follow LCSB Policy Sec. 1040 by her acts and omissions set forth in paragraphs 32-36, 45-46, 54-56, 63-73, 76-80 and 90-93 above;

B. Defendant Mackey failed to follow LCSB Policy Sec. 7014 by her acts and omissions set forth in paragraphs 32-36, 45-46, 54-56, 63-73, 76-80 and 90-93 above;

C. Defendant Mackey failed to follow LCSB Policy Sec. 7560 by her actions and omissions set forth in paragraphs 32-36, 45-46, 54-56, 63-73, 76-80 and 90-93 above.

130. Defendant Mackey's position is to the contrary.

131. The Plaintiff is entitled to an award of attorneys' fees and costs pursuant to Va. Code Ann. § 8.01-190.

**WHEREFORE**, the Plaintiff requests this Honorable Court enter declaratory judgment as set forth above, for an award of attorneys' fees and costs and for such further relief as the nature of this cause may require.

## **COUNT III**

### **(Declaratory Judgment – Defendant School Board)**

132. The Plaintiff incorporates the allegations in paragraphs 1 through 131 above.

133. An actual justiciable controversy ripe for adjudication exists between the parties, and the Plaintiff requests this Court enter declaratory judgment establishing:



A. The Plaintiff's actions as set forth in paragraphs 48-51 above did not violate FERPA;

B. The Plaintiff's actions as set forth in paragraphs 81-82 did not violate FERPA;

C. The Plaintiff's actions as set forth in paragraphs 48-51 above did not violate LCSB Policy Sec. 7566;

D. The Plaintiff's actions as set forth in paragraphs 81-82 above did not violate LCSB Policy Sec. 7566;

E. The Plaintiff's actions as set forth in paragraphs 48-51 above did not violate LCSB Policy Sec. 8640;

F. The Plaintiff's actions as set forth in paragraphs 81-82 above did not violate LCSB Policy Sec. 8640.

134. Defendant School Board's position is to the contrary.

135. The Plaintiff is entitled to an award of attorneys' fees and costs pursuant to Va. Code Ann. § 8.01-190.

**WHEREFORE**, the Plaintiff requests this Honorable Court enter declaratory judgment as set forth above, for an award of attorneys' fees and costs and for such further relief as the nature of this cause may require

#### **COUNT IV**

##### **(Permanent Injunction – Defendant School Board)**

136. The Plaintiff incorporates the allegations set forth in paragraphs 1 through 135 above.

137. The Plaintiff requests Defendant School Board be permanently enjoined from:



A. Conducting further investigations of her, including, but not limited to the investigation describe in paragraphs 83-85 above. The current investigation is nothing more than retaliation against the Plaintiff for her March 11, 2022 Title IX complaint, her mandatory report to CPS pursuant to Va. Code Ann. § 63.2-1509, the March 22, 2022 public comment by a Loudoun resident at Defendant School Board's meeting, the Plaintiff's March 25, 2022 Title IX complaint, her April 26, 2022 Special Grand Jury testimony, and her public comment at the June 7, 2022 Defendant School Board's meeting;

B. Making further false statements pertaining to the subject matter set forth in paragraphs 86-89 above (as an alternative theory of recovery to the defamation claims set forth below).

138. Defendant School Board has caused, and unless restrained, will continue to cause the Plaintiff immediate and irreparable injury for which the Plaintiff has no adequate remedy at law.

**WHEREFORE** the Plaintiff requests this Honorable Court grant her a permanent injunction against Defendant School Board as set forth above, for an award of attorneys' fees and costs and for such further relief as the nature of this cause may require.

#### **COUNT V**

##### **(Permanent Injunction –Defendant Mackey)**

139. The Plaintiff incorporates the allegations set forth in paragraphs 1 through 138 above.

140. The Plaintiff requests Defendant Mackey be permanently enjoined from the following making further false statements pertaining to the subject matter set forth in paragraphs 90-93 above (as an alternative theory of recovery to the defamation claims set forth below).

141. Defendant Mackey has caused, and unless restrained, will continue to cause the Plaintiff immediate and irreparable injury for which the Plaintiff has no adequate remedy at law.

**WHEREFORE** the Plaintiff requests this Honorable Court grant her a permanent injunction against the Defendant as set forth above, for an award of attorneys' fees and costs and for such further relief as the nature of this cause may require.

### **COUNT VI**

#### **(Defamation – Defendant School Board)**

142. The Plaintiff incorporates and restate the allegations contained in paragraphs 1 through 141 above.

143. Defendant School Board made the false statements as set forth in paragraphs 86-89 above.

144. All of the above statements were about the Plaintiff.

145. Defendant School Board's statements are categorically and demonstrably false as the Plaintiff never "improperly distributed student records without the consent of the family and without the knowledge of school staff for reasons that are unrelated to their job duties."

146. The statements were published in the media and were seen and/or heard by members of the Loudoun County Community and/or members of the general public.

147. Defendant School Board made all the above statements knowing them to be false and/or made the statements so recklessly as to amount to a willful disregard for the truth.

148. Defendant School Board knew with a high degree of awareness that the statements were probably false.

149. To the extent Defendant School Board believe its statements to be true, it lacked reasonable grounds for such belief.

150. The statements are so harmful to the reputation of the Plaintiff as to lower her in the estimation of the community and/or to deter third persons from associating or dealing with her.

151. All the above statements were made because of personal spite, hatred, ill will, or desire to hurt the Plaintiff, and part of an elaborate scheme of Defendant School Board to retaliate against the Plaintiff for her March 11, 2022 Title IX complaint, her mandatory report to CPS pursuant to Va. Code Ann. § 63.2-1509, the March 22, 2022 public comment by a Loudoun resident at Defendant School Board's meeting, the Plaintiff's March 25, 2022 Title IX complaint, her April 26, 2022 Special Grand Jury testimony, and her public comment at the June 7, 2022 Defendant School Board's meeting.

152. The Plaintiff suffered damages as a result of the Defendant School Board's actions.

**WHEREFORE**, the Plaintiff requests this Honorable Court enter judgment against Defendant School Board for compensatory and punitive damages in an amount to be proven at trial not to exceed \$1,000,000.00, plus reasonable attorneys' fees and costs incurred herein and interest at judgment rate from the date of judgment and for such further relief as the nature of this cause may require.

## **COUNT VII**

### **(Defamation – Defendant Mackey)**

153. The Plaintiff incorporates and restate the allegations contained in paragraphs 1 through 152 above.

154. Defendant Mackey made the false statements as set forth in paragraphs 90-93 above.



155. All of the above statements were about the Plaintiff.
156. Defendant Mackey's statements are categorically and demonstrably false as the Plaintiff never share private information about a student publicly.
157. The statements were published to the entire staff of the school at which the Plaintiff was employed and/or members of the general public.
158. Defendant Mackey made all the above statements knowing them to be false and/or made the statements so recklessly as to amount to a willful disregard for the truth.
159. Defendant Mackey knew with a high degree of awareness that the statements were probably false.
160. To the extent Defendant Mackey believe the statements to be true, she lacked reasonable grounds for such belief.
161. The statements are so harmful to the reputation of the Plaintiff as to lower her in the estimation of the community and/or to deter third persons from associating or dealing with her.
162. All the above statements were made because of personal spite, hatred, ill will, or desire to hurt the Plaintiff, and were made by Defendant Mackey to retaliate against the Plaintiff for her March 11, 2022 Title IX complaint, her mandatory report to CPS pursuant to Va. Code Ann. § 63.2-1509, the March 22, 2022 public comment by a Loudoun resident at Defendant School Board's meeting, the Plaintiff's March 25, 2022 Title IX complaint, her April 26, 2022 Special Grand Jury testimony, and her public comment at the June 7, 2022 Defendant School Board's meeting.
163. The Plaintiff suffered damages as a result of the Defendant Mackey's actions.

**WHEREFORE**, the Plaintiff requests this Honorable Court enter judgment against Defendant Mackey for compensatory and punitive damages in an amount to be proven at trial not to exceed \$1,000,000.00, plus reasonable attorneys' fees and costs incurred herein and interest at judgment rate from the date of judgment and for such further relief as the nature of this cause may require.

**DEMAND FOR TRIAL BY JURY**

The Plaintiff requests this cause be adjudicated in a trial by jury.

Respectfully submitted,

  
ERIN BROOKS

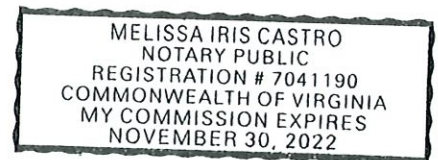
**COMMONWEALTH OF VIRGINIA**

**CITY/COUNTY OF** London, to-wit:

I, **ERIN BROOKS**, a citizen of the United States and resident and domiciliary of the Commonwealth of Virginia, do solemnly swear under penalty of perjury that I have read the foregoing and that the foregoing is true and accurate to the best of my knowledge and believe.

**SUBSCRIBED** and sworn on this 15<sup>th</sup> day of June, 2022.

  
Notary Public





---

John C. Whitbeck, Jr., VSB No. 47525  
Kevin B. McCandlish, VSB No.  
WhitbeckBennett, PLLC.  
120 Edwards Ferry Road NE  
Leesburg, Virginia 20176  
Telephone: (703) 777-1795  
Facsimile: (703) 777-9079  
Email: [jwhitbeck@wblaws.com](mailto:jwhitbeck@wblaws.com)  
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## Loudoun Co. Public Schools responds to special education teachers' claims of sexual assault

Jack Moore | [jmoore@wtop.com](mailto:jmoore@wtop.com)

June 10, 2022, 3:50 PM

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The Loudoun County Public School system in Virginia is responding to two educators who say they were retaliated against after reporting being sexually assaulted by a student in their classroom.

Erin Brooks, a special-education teacher, and Lauren Vandermuelen, a teacher's assistant, claim they were repeatedly groped and subjected to "overly sexualized behaviors" by the student, and the teachers said their contracts weren't renewed after they spoke out.

In a statement Friday, the school system said the student is a non-verbal elementary school student with significant intellectual disabilities whose actions are being mischaracterized. The statement also said the teachers improperly shared students records.

The teachers' allegations of groping first came to public attention during a March school board meeting, and the teachers repeated their claims in a public school board meeting and an appearance on Fox News this week.

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"While we encourage all teachers and students to report any concerns about inappropriate touching or sexual assault to the appropriate authorities, we expect staff to do so in the process laid out in LCPS policy that is consistent with our need to protect the privacy of our students as well," according to a statement from the school system. "These teachers improperly distributed student records without the consent of the family and without the knowledge of school staff for reasons that are unrelated to their job duties and this profound breach of trust to their students has been addressed appropriately by LCPS."



In the statement, the school spokesman said LCPS took several steps to address the special education teachers' concerns, including providing additional training.

"Like many students who are unable to speak, this student often resorts to physical contact when frustrated, and the student has a behavior intervention plan to address this concern," the statement said. "When the student's behavior intervention plan is followed, the behavior is minimized, and to mischaracterize a manifestation of a student's severe disability as sexual assault or abuse is flatly incorrect."



When the additional training did not resolve the issue, LCPS moved the student to a different class, "where these behaviors subsequently ceased," according to the statement.

- 
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- 

It is exceedingly rare for schools to release this sort of personal detail about a student, but the school system said it had received permission from the student's family to protect the student and the student's family from "further mischaracterizations and unwarranted ostracizing."

"While all allegations of sexual assault and sexual harassment must be investigated appropriately, the privacy of our students must be respected as well," the statement said. "However, in order to protect this student and their family, it is necessary to address these inaccuracies publicly."

Vague allegations that teachers were allegedly being inappropriately touched were first brought up in March. Ian Prior, the executive director of the organization Fight For Schools, [the group that previously organized a recall effort of school board members](#), alluded to the allegations during a March 22 public school board meeting.

Then on Tuesday, both teachers spoke publicly at a school board meeting, claiming the school system failed to respond to their concerns and then retaliated against them after the allegations were first raised in that March meeting, including declining to renew their teaching contracts.

At Tuesday's board meeting, Vandermuelen, who also made an appearance on Fox News this week, identified herself as a sexual assault victim and said the school system declined to renew her contract after she gave testimony to a special grand jury investigating the school system's handling of two sexual assaults last year in the county's high schools.

A group called Loudoun Moms [has set up a GoFundMe](#) seeking to raise \$40,000 for what it called Vandermuelen's legal fund.



In her remarks at the school board meeting, Brooks claimed the student exhibited “overly sexualized behaviors,” including fondling, groping, and facial and hand gestures and that the school’s response was “to launch a smear campaign against me and move the student into another classroom.”

She said she too had spoken to the special grand jury.

A statement earlier this week from Superintendent Scott Ziegler made during the school board said LCPS “has neither retaliated against any employee for raising concerns about sexual harassment nor taken any adverse action against anyone for testifying before a special grand jury. Any claim to the contrary is simply untrue.”



The Loudoun school system has come under intense scrutiny for its handling of sexual assaults on its campuses. Virginia Attorney General Jason Miyares empaneled a grand jury this spring to investigate how the school system handled sexual assaults in the county’s high schools.

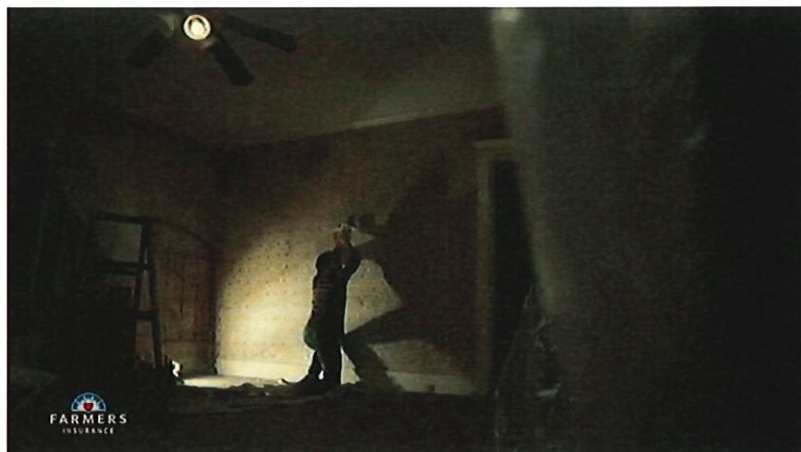
A now-15-year-old was arrested last May in connection with a sexual assault [at Stone Bridge High School](#), and was then transferred to Broad Run High School, where he assaulted another girl months later.

During their 2021 campaigns for office, both Miyares and Gov. Glenn Youngkin alleged LCPS covered up the handling of the sex assaults.

The school system has [sought to halt the special grand jury](#), calling it a “fishing expedition.”

WTOP’s Neal Augenstein contributed to this report.

AD







**Jack Moore**  
Jack Moore joined WTOP.com as a digital writer/editor in July 2016. Previous to his current role, he covered federal government management and technology as the news editor at Nextgov.com, part of Government Executive Media Group.  
✉ [jmoore@wtop.com](mailto:jmoore@wtop.com)

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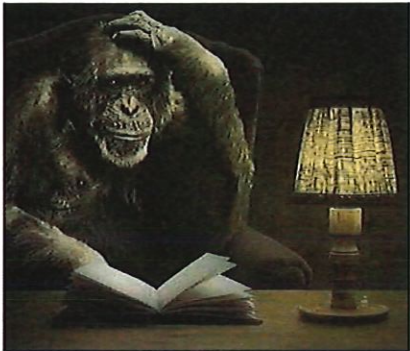
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Jack Moore | loudoun county public schools

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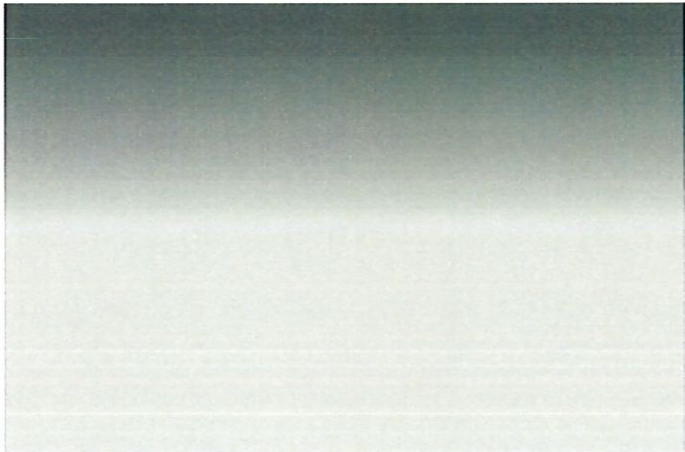
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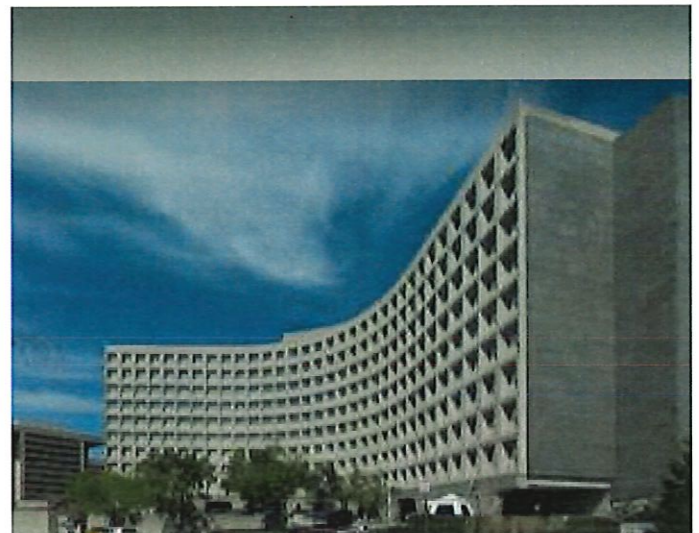
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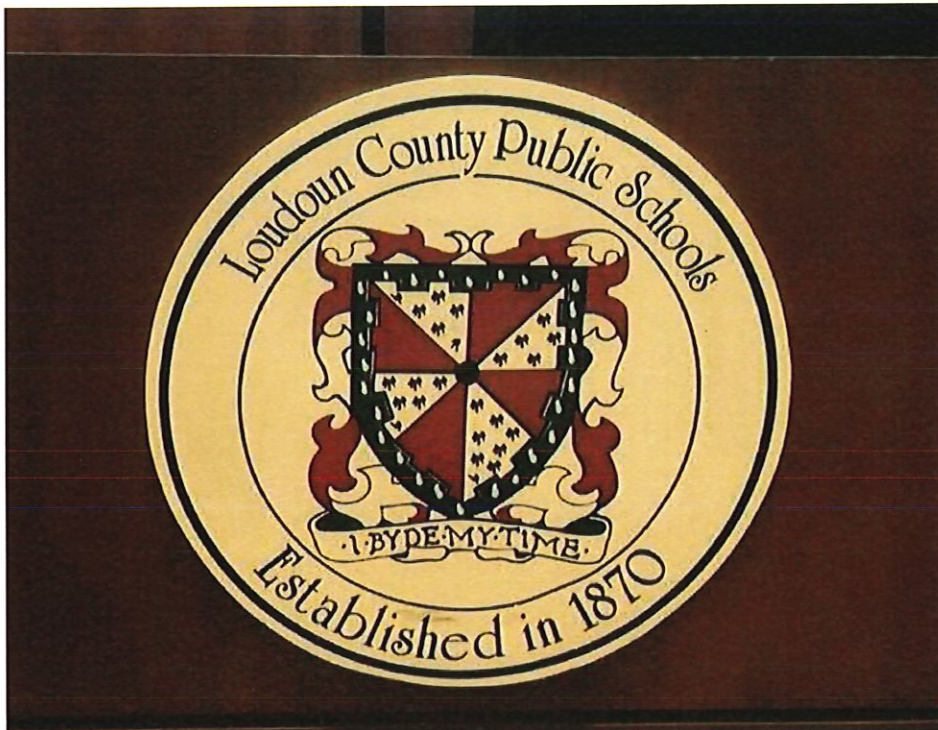


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**Loudoun Public Schools Co. respond to statements by special education teachers about sexual violence**

User June 11, 2022

The Loudoun County Public Schools system responds to two educators who say they were retaliated after reports of repeated sexual abuse by a student in their class.

The Loudoun County Public Schools system in Virginia is responding to two educators who say they were retaliated after a report of sexual abuse by a student in their classroom.

Erin Brooks, a special education teacher, and Lauren Vandermühlen, a teacher's assistant, say they have been repeatedly touched and subjected to "excessively sexualized student behavior," and teachers said their contracts were not renewed after they spoke.

In a statement Friday, the school system said the student is a nonverbal elementary school student with significant intellectual impairments whose actions are incorrectly characterized. The statement also said teachers misrepresented student records.

Teachers' allegations of groping first came to the public during a school board meeting in March, and teachers reiterated their claims at a public school board meeting and speeches in Fox News this week.

"While we encourage all faculty and students to notify the appropriate authorities of any concerns about inappropriate touching or sexual abuse, we expect staff to do so in a process outlined in the LCPS policy that meets our need to protect the privacy of our students. also, "the school system said in a statement. "These teachers improperly disseminated student records without family consent and without the knowledge of school staff for reasons unrelated to their job responsibilities, and this pro  
↑  
abuse of trust in their students was properly eliminated by the LCPS."



A statement from the school spokesman said the LCPS had taken several steps to address the challenges of special education teachers, including providing additional training.

"Like many students who cannot speak, this student often turns to physical contact when frustrated, and the student has a behavioral intervention plan to address the problem," the statement said. "If a plan of intervention in student behavior is followed, the behavior is minimized, and it is incorrect to characterize the manifestation of severe student disability as sexual violence or violence is categorically incorrect."

If additional training did not solve the problem, the LCPS transferred the student to another class, "where these behaviors subsequently stopped," the statement said.

Schools very rarely disclose such personal information about a student, but the school system said it received permission from the student's family to protect the student and the student's family from "further errors and unwarranted astrocism."

"While all allegations of sexual harassment and harassment must be properly investigated, the privacy of our students must also be respected," the statement said. "However, to protect this student and their family, it is necessary to publicly eliminate these inaccuracies."

In March, for the first time, vague allegations were made that teachers had allegedly been inadequately touched. Ian Prior, CEO of Fight For Schools, [a group that had previously organized the recall of school board members](#) hinted at these allegations during a March 22 public school board meeting.

Then on Tuesday, both teachers spoke publicly at a school board meeting, arguing that the school system had failed to respond to their concerns and then retaliated against them after accusations were first made at that March meeting, including refusing to renew their teaching contracts. .

At a board meeting on Tuesday, Vanderμήhlen, who also appeared on Fox News this week, called herself a victim of sexual violence and said the school system refused to renew her contract after she testified to a special grand jury investigating the actions school system. two sexual assaults last year in county high schools.

A band called Loudoun Moms [created by GoFundMe](#) seeking to raise \$ 40,000 for what he called Vanderμήhlen's legal foundation.

In a statement to the school board meeting, Brooks said the student had shown "excessively sexualized behavior," including caresses, touches, and facial and hand gestures, and that the school's response was to "launch a defamatory campaign against me and move the student to another classroom." room.

She said she also spoke to a special grand jury.

A statement earlier this week from school principal Scott Ziegler said the LCPS "did not retaliate against any staff member for expressing concern about sexual harassment and did not take any negative action against anyone for testifying before a special grand jury. Any statement to the contrary is simply not true. "

The Loudoun school system has come under close scrutiny because of the fight against sexual violence on campus. Virginia Attorney General Jason Mires convened a grand jury this spring to investigate how the school system handled sexual violence in county high schools.

The now 15-year-old was arrested last May in a sexual assault case [at Stone Bridge High School](#) and was then transferred to Broad Run High School, where a few months later he attacked another girl.

During their election campaigns in 2021, both Mires and Governor Glen Yangkin argued that the LCPS covered up the handling of sexual assaults.

The school system has [sought to stop the special grand jury](#), calling it a "fishing expedition".

*Neil Augstein of WTOP contributed to this report.*

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Diane Mackey  
To RLC-All Staff

4:34 PM

...

Staff,

It saddens me to have to send this email. However, because private information about one of our students was shared publicly by two of our employees, the school district has released a statement with the permission of the parents. I thought you should be made aware.

<https://wtop.com/loudoun-county/2022/06/loudoun-co-public-schools-responds-to-special-education-teachers-claims-of-sexual-assault/>

I hope you know how much Ryan, Jenn, Alison and I care about each one of you and how important it is to us to be supportive of our staff.

Ultimately, we all have a duty and responsibility to protect the best interests of our students. This duty includes, but is not limited to, protecting the privacy of our students and their families.

The Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g; 34 CFR Part 99) is a Federal law that protects the privacy of student education records. School Board Policy 8640 establishes guidelines for protecting the Personally Identifiable Information (PII) of students and the conditions that constitute legal disclosure for access to Education Records (records).

Please come speak with me on Monday if you have any questions or concerns.

Sincerely,  
Diane

