



Special Education Advisory Committee

Draft Policy 3210 OFFICE OF THE OMBUDS

Review and Recommendations Summary **January 11, 2023**

Prepared For:
SEAC Membership
Special Education Community
Loudoun County School Board

Overview: Policy 3210

OFFICE OF THE OMBUDS

The purpose of the Office of the Ombuds is to provide students, families, employees, and members of the school community with access to an independent, impartial individual who can facilitate a confidential and informal resolution of concerns, conflicts, and issues arising within Loudoun County Public Schools (LCPS), and who is authorized to bring systemic and organizational concerns to the attention of the Division Superintendent for resolution.

The Regulations Governing Special Education Programs for Children with Disabilities in Virginia reflect the state and federal requirements for the provision of special education and related services. Section [8VAC20-81-230 D.2](#) of the Virginia regulations mandate that an active SEAC exists, specifies membership that requires that a majority of members be individuals with disabilities or parents of children with disabilities as well as defines specific functions of the SEAC, which are as follows:

1. Advise the local school division of needs in the education of students with disabilities;
2. Participate in the development of priorities and strategies for meeting the identified needs of students with disabilities;
3. Submit periodic reports and recommendations regarding the education of students with disabilities to the division superintendent for transmission to the local school board;
4. Assist the local school division in interpreting plans to the community for meeting the special needs of students with disabilities for educational services;
5. Review the policies and procedures for the provision of special education and related services prior to submission to the local school board; and
6. Participate in the review of the local school division's annual plan.

This report satisfies requirement 3 and 5 above. SEAC has reviewed the draft policy and determined that it does not meet the needs of students with disabilities.

Summary of Concerns and Recommendations

SEAC is concerned that the policy as drafted may be misleading to the public about the extent and nature of the confidentiality of communication or data collected by the Ombuds. SEAC is requesting that the School Board clarify what Ombuds information or documentation LCPS could be forced to disclose by a subpoena or VAFOIA request.

SEAC Membership Vote

SEAC Membership Vote on Recommendations

Quorum: 13 out of 17 SEAC Members present – Quorum established

Motion: Melissa Waugh made the motion to move the concern to membership vote, seconded by Shehnaz Khan

Vote Summary: Passed Unanimously

OFFICE OF THE OMBUDS

1 This policy establishes guidelines for the responsibilities related to the Office of
2 the Ombuds.

3 4 A. Purpose

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6 The purpose of the Office of the Ombuds is to provide students, families,
7 employees, and members of the school community with access to an independent,
8 impartial individual who can facilitate a confidential and informal resolution of concerns,
9 conflicts, and issues arising within Loudoun County Public Schools (LCPS), and who is
10 authorized to bring systemic and organizational concerns to the attention of the Division
11 Superintendent for resolution.

12
13 The resolution process provided by the Office of the Ombuds is not intended to
14 replace or supersede the formal and/or legal procedures provided by the School Board
15 or by law for the filing, investigation, and resolution of complaints asserted against, by,
16 or on behalf of individual students or employees under other School Board policies and
17 regulations. Rather, the services of the Ombuds supplement formal channels for the
18 resolution of complaints. Use of the Ombuds is voluntary and is not a required step in
19 any grievance or complaint procedure. In the absence of, or as an alternative to informal
20 resolution, the Ombuds will provide those contacting them with information concerning
21 how to access such formal procedures where applicable, but the Ombuds does not play
22 any role in the School Division's formal complaint and resolution procedures.

23
24 The Office of the Ombuds shall operate under the Core Values of Independence,
25 Impartiality, Confidentiality, and Informality, as encompassed in the International
26 Ombuds Association's Code of Ethics and Standards of Practice set forth in this policy.

27
28 B. Scope of Authority and Independence. Although the Ombuds shall function
29 independently from control, limitation, influence, or interference by any individual School
30 Board member or LCPS employee, the Ombuds shall be supervised by the Chief of
31 Staff. The Ombuds shall remain impartial/neutral and shall hold no other position within
32 or beyond LCPS that might otherwise compromise their independence. The Ombuds
33 shall have access to all necessary information and individuals within the School
34 Division, to the extent permitted by law and School Board policies and regulations. The
35 Ombuds does not have the authority to make binding decisions, mandate policies,
36 regulations, or procedures, formally adjudicate issues for LCPS, nor participate in
37 management functions, formal complaint and resolution procedures, and investigations.

38
39 The Chief of Staff, in consultation with the Division Superintendent and subject to
40 the approval of the School Board, shall determine the appropriate level of funding and
41 resources to be provided to the Office of the Ombuds. The Ombuds shall have the
42 authority to select and manage any staff of the Office of the Ombuds, subject to all

OFFICE OF THE OMBUDS

LCPS policies, regulations, and procedures governing the hiring, evaluation, and discipline of LCPS employees.

C. Protection from Retaliation. The Ombuds shall not be subject to retaliation by any person who may be the subject of a complaint and may only be removed from office upon the recommendation of the Division Superintendent, and subject to the approval of the School Board for unsatisfactory performance, as documented by the LCPS evaluation process; neglect of duty; misconduct; violation of School Board policies and regulations; or other just cause.

D. Standards of Practice

1. Receipt of Concerns and Confidentiality. Use of the services of the Ombuds is entirely voluntary. LCPS officers and employees may refer individuals or groups to the Office of the Ombuds but may not require individuals to contact or resolve concerns with that office. The Ombuds shall not communicate with any School Board member, officer, or employee referring an individual or group to them, nor report the specifics of any resolution or concern arising out of a referral to such member, officer, or individual, except as part of their annual data report to Division leadership -- and then only without revealing the identity of any particular individuals or groups that contacted the Ombuds.

- a. The Ombuds may assist constituents in person, by phone, or by letter or electronic communication, but, in all cases, they shall hold all communications with those seeking assistance in strict confidence and shall take all reasonable steps to preserve the confidentiality of those constituents to the extent permissible by law. This includes allegations that may be perceived to be violations of law, regulations, or policies. However, the Ombuds may unilaterally violate confidentiality if the Ombuds believes there is an imminent risk of serious harm, or if maintaining confidentiality would violate applicable law. Where circumstances exist that involve suspected child abuse and neglect, the Ombuds may refer individuals to the appropriate individual or location where notice can be made, and, in the event the individual does not immediately contact Child Protective Services of suspected child abuse or neglect, the Ombuds shall do so as a mandated reporter. The Ombuds shall not otherwise reveal the identity of any individual contacting the Office of the Ombuds, nor reveal information provided in confidence that could lead to the identification of any individual contacting that office, without the express permission of that contact, and then only to the extent necessary to resolve the

OFFICE OF THE OMBUDS

issue. However, the Ombuds may disclose confidential information about a specific matter to the extent the Ombuds determines it is necessary to defend themselves against a formal complaint of professional misconduct.

b. The Ombuds shall not respond to nor communicate with the public or the media regarding any specific individual or group complaint nor other confidential activities of the Office of the Ombuds. The Ombuds may, however, use the media and other means of public communication to promote the use of their services. As a condition of using the services of the Ombuds, those contacting the Ombuds for assistance shall agree to abide by these confidentiality principles.

c. The Ombuds shall exercise sole discretion over how best to respond to a concern, including, but not limited to: listening and helping to clarify constituents' concerns; providing information and exploring options available to those constituents, including informal advice, guidance, and navigation of LCPS procedures and departments, formal LCPS processes, and information regarding external resources or assistance; facilitating discussions to resolve issues and/or conducting informal mediation, where voluntarily agreed by all involved parties and as appropriate. However, the Ombuds shall never provide legal advice.

2. Access to Records. The Ombuds is deemed an LCPS "school official," as defined in Policy 8640 (Disclosure of Student Personally Identifiable Information) and the Student Right and Responsibilities Handbook (SR&R), and, in accordance with the Family Educational Rights and Privacy Act of 1974 (FERPA) and Policy 8610, is authorized to access students' education records without a parent's/guardian's or eligible student's consent if the Ombuds needs to review those education records in order to fulfill their professional responsibility.

3. Neutrality and Impartiality. The Ombuds shall remain neutral, impartial, and unaligned. All members of the community served by the Ombuds may voluntarily seek their services and shall be treated with dignity and respect. The Ombuds shall consider the legitimate concerns and interests of all individuals and groups affected by the matter under consideration.

The Ombuds shall neither be associated with nor aligned with any formal or informal associations within, or connected to, LCPS, which might create the appearance of a conflict of interest or lack of neutrality. The Ombuds may meet with formal and informal

OFFICE OF THE OMBUDS

associations for purposes of collaboration and explanation of the role and services provided by the Office of the Ombuds. Further, the Ombuds shall neither serve on any LCPS committee nor task force. The Ombuds shall have no interest or stake in, and incur no gain or loss from, the outcome of an issue.

E. Access to Legal Counsel. The Ombuds shall have access to Division Counsel as needed. In instances where Division Counsel and the Ombuds agree that outside legal counsel is required to provide advice or guidance to the Ombuds, in order to avoid compromising the impartiality and independence of the Ombuds, Division Counsel is authorized to retain such outside legal services but shall report the same to the Chief of Staff or Division Superintendent as soon as possible. In instances where Division Counsel does not agree that outside legal counsel is necessary to assist the Ombuds, the Ombuds shall request authority to retain outside legal counsel directly from the Chief of Staff or Division Superintendent.

F. Reporting Complaints to the Ombuds Does Not Constitute Notice of Claims. Communications made to the Ombuds shall not constitute notice to the School Board, LCPS, or its administration or employees, for any purpose, including claims asserted under local, state, or federal law, such as FOIA, FERPA, Title VI or Title VII, IDEA, Section 504 of the Rehabilitation Act, etc., or for any other legal or administrative purpose. However, the Ombuds may refer individuals to the appropriate individual or location where notice can be made, and, in the event that an individual does not immediately contact Child Protective Services of suspected child abuse or neglect or report allegations of Title IX sexual harassment to the Title IX Coordinator, the Ombuds shall do so as a mandated reporter. Where an individual is not able to reach an informal resolution of their concern through the Office of the Ombuds and desires to pursue a concern through other legal or administrative avenues, they must present their allegations in a timely manner, under any such applicable statutes or procedures.

G. Limitations. The Office of the Ombuds shall not accept any formal complaints nor conduct investigations. However, the Ombuds may assist with the resolution of individual concerns asserted by employees or students at the request of the Division Superintendent or the Office of Division Counsel.

H. Involvement in Internal Audit, Division Counsel, Risk Management, Special Education, or Other Formal Investigations. Unless otherwise required by law, the Ombuds shall not intervene or participate in any formal complaints or investigations, including those which have been referred to or are under investigation by Child Protective Services, the Loudoun County Sheriff's Office (LCSO), LCPS Human Resources and Talent Development, Office of the Auditor General, Office of Division Counsel or outside legal counsel for LCPS, Title IX Office, or which have otherwise been referred by the School Board or LCPS for formal investigation. The Ombuds shall

OFFICE OF THE OMBUDS

neither intervene nor participate in any complaints which are the subject of any pending special education mediation, due process hearing or litigation, or any other pending mediation, legal or administrative proceeding outside of LCPS, including but not limited to, lawsuits pending in any court, and charges/complaints filed with the Office of Civil Rights of the United States Department of Education, the United States Department of Justice, the United States or Virginia Departments of Labor, the EEOC, the Virginia Department of Education, or any other local, state, or federal agency.

The Ombuds may decline to inquire into any matter or may withdraw from any matter if the Ombuds believes involvement is inappropriate for any reason, including a matter not brought in good faith or which appears to be a misuse of the Ombuds' function.

I. Data Collection and Reporting. An important role of the Ombuds is the identification of trends, issues, and systemic concerns involving LCPS policies, regulations, procedures, and organizational practices, or lack thereof. The Ombuds shall compile data documenting the nature and number of concerns handled by their Office, and shall use such data, without breaching confidentiality or anonymity, to: make a report and recommendations to the School Board and Division Superintendent on an annual basis, and may provide supplementary reports if requested by the School Board—to include the activities conducted by the Office of the Ombuds; identify trends and problematic areas; and inform recommendations for systemic and organizational change, improvement or resolution within LCPS, its schools, and departments.

The School Board authorizes the LCPS Ombuds to develop operational guidelines to implement this policy.

The School Board and LCPS Ombuds shall be responsible for implementing and monitoring this policy.

Adopted: _____

Legal Refs: Va. Code § 22.1- 253.13:7(C)(1)(4) and (6)

Cross Refs: Policy 8610 (Student Records); Policy 8640 (Disclosure of Personally Identifiable Information); Student Right and Responsibilities Handbook (SR&R)

OFFICE OF THE OMBUDS