



August 2, 2022

Virginia Department of Education  
Superintendent Jillian Balow  
James Monroe Bldg., 25th Floor  
101 N. 14th St.  
Richmond, VA 23219

**Re: Public Comment on Model Policies Concerning Instructional Materials with Sexually Explicit Content**

Dear Superintendent Balow,

On behalf of the ACLU of Virginia (ACLUVA), we respectfully submit the following comment opposing the proposed model policies concerning instructional materials with sexually explicit content. ACLUVA is a private, nonpartisan, non-profit organization representing more than 37,000 members that promotes civil liberties and civil rights for everyone in the Commonwealth through public education, litigation and advocacy with the goal of securing freedom and equality for all.

Educators and librarians cannot do their job if they are constantly being required to justify their curricula and instruction to parents who may hold diametrically opposing viewpoints. Nor was the public education system put in place to present a homogenized viewpoint. The education of young Virginians will be disrupted by efforts to use classrooms to support a political agenda—a space of control rather than a thriving ground for free speech and freedom of thought.

**I. The proposed model policies will likely target curriculum by and/or that includes LGBTQ people and Black, Indigenous, and other communities of color.**

Across the country, we are seeing a significant rise in the number of books and other instructional material, like music and films, being banned in classrooms and libraries. PEN America found that during the 2021-2022 school year, nearly 1600 books were banned from schools, a dramatic increase from 300 the previous school year.<sup>1</sup> Moreover, 41 percent of banned books contained protagonists or prominent secondary characters of color and 33 percent explicitly featured lesbian, gay, bisexual, transgender, and queer (LGBTQ) themes and/or protagonists.<sup>2</sup> When books are removed from the shelves, students miss valuable opportunities to be exposed to diverse viewpoints and perspectives. The exclusion of

---

<sup>1</sup> PEN America, *Banned in the USA* (2022), <https://pen.org/banned-in-the-usa/>.

<sup>2</sup> *Id.*

marginalized viewpoints and stories will negatively impact Virginia students as a result of the Virginia Department of Education (VDOE) proposed model policies.

“Sexually explicit content” as defined in the Virginia code casts a wide net on what materials on which it falls. For example, the definition of “sexually explicit content” includes “sexual conduct” which is further defined to include “homosexuality.”<sup>3</sup> Such a broad definition is likely to lead teachers, librarians, and school administrators to restrict access to instructional materials that includes or are written by LGBTQ people. The impact would not only be LGBTQ students being treated as “other” and pushed into the shadows but removing such a broad category of literature detracts from the richness and diversity of our nation and potentially prevents LGBTQ youth from accessing life-saving information about themselves. Seeing yourself reflected in instructional materials is not “sexually explicit”, it is reality and one to which all students, including LGBTQ students, must have access.

Our concern extends to materials by or including the experiences of Black, Indigenous, and other people of color (BIPOC). The definition of “sexually explicit content” does not include race or racism. However, we have unfortunately witnessed several school districts in Virginia target books for removal that address race and racism and have sought to do so by reducing rich and complicated stories to mere sentences void of context. For example, three school districts, including Virginia Beach, sought to ban “The Bluest Eye” by Nobel laureate Toni Morrison for its depiction of racism and sexual abuse.<sup>4</sup> The vagueness of the standard invites this kind of suppression of disfavored voices. Embedded in the story’s setting and time frame, these stories help students understand how BIPOC bodies are objectified and used by an oppressor. These stories happened and still happen today. What valuable lessons will be missed if students only have access to sanitized versions of reality, deprived of real people’s lives and experiences? As drafted, the proposed model policies codify and force all Virginia school districts to adopt this anti-free speech practice and will only exacerbate an alarming trend toward classroom censorship, all while denying students the opportunity to be inspired by stories of people from all walks of life trying to live authentically in school curriculum.

## **II. The proposed model policies will lead to classroom censorship.**

The proposed model policies raise serious logistical concerns and will add substantial and unnecessary labor to educators across the Commonwealth at a time when there’s an alarming shortage of teachers. The vague direction in the policies may potentially result in censorship as teachers and librarians seek to minimize the risk of being out of compliance

---

<sup>3</sup> See VA Code § 18.2-390(3) (2022).

<sup>4</sup> See Jessica Nocera and Sean McGoey, *23 Va. School districts taken books off shelves in past two years*, Richmond Times-Dispatch, May 7, 2022, [https://richmond.com/news/local/education/23-va-school-districts-have-taken-books-off-shelves-in-past-two-years/article\\_7ce0f31d-dbab-55f0-9576-cb4ae93e14eb.html](https://richmond.com/news/local/education/23-va-school-districts-have-taken-books-off-shelves-in-past-two-years/article_7ce0f31d-dbab-55f0-9576-cb4ae93e14eb.html).

with an adopted policy. The intent of the proposed model policies was to provide a uniform process for school districts to identify and notify parents of content that falls under the newly created “sexually explicit content” list. However, section three of the proposed model policies provides little to no guidance, instead leaving the development of an identification process entirely to school leadership.<sup>5</sup> This will result in a patchwork of identification and notification policies that could vary from school to school, even those in the same district.

The proposed model policies require principals to provide parents with written notification of “sexually explicit content” instructional materials 30 days before the materials may be accessed by students.<sup>6</sup> As defined, “instructional materials” includes materials available in school libraries when used as part of a class assignment.<sup>7</sup> We are concerned with a school’s ability to comply with the 30-day written notification requirement. For example, if a student checks out a book, which has not been specifically assigned by a teacher, from the library to complete a class project that subsequently some parents perceive as “sexually explicit content.” the ability to provide notice would not have been foreseen. To avoid the risk of being out of compliance with the proposed model policies, principals may ask librarians to proactively and subjectively identify all “sexually explicit content” in a school library in order to provide sufficient notice, which will certainly create an undue burden.

Denying our children access to diverse viewpoints and experiences will only undermine their potential. Ignorance leads to fear. Fear leads to prejudice, discrimination, and violence. The role of education is to instill in students a sense of curiosity and cultivate understanding and compassion. These foundations will go a long way in growing a new generation of brave, courageous people who value diversity, equity, and inclusion. It is for this and the reasons above that ACLUVA opposes the proposed model policies.

Sincerely,

Breanna Diaz  
Policy & Legislative Counsel  
ACLU of Virginia

---

<sup>5</sup> Virginia Department of Education, *Model Policies Concerning Instructional Materials with Sexually Explicit Content*, at 10 (2022), [hereinafter *Model Policies*] [https://townhall.virginia.gov/L/GetFile.cfm?File=C:%5CTownHall%5Cdocroot%5CGuidanceDocs\\_Proposed%5C201%5CGDoc\\_DOE\\_6205\\_20220615.pdf&eType=EmailBlastContent&eId=f9a2e938-3ba8-440c-bb7a-2a35146c31bf](https://townhall.virginia.gov/L/GetFile.cfm?File=C:%5CTownHall%5Cdocroot%5CGuidanceDocs_Proposed%5C201%5CGDoc_DOE_6205_20220615.pdf&eType=EmailBlastContent&eId=f9a2e938-3ba8-440c-bb7a-2a35146c31bf).

<sup>6</sup> *Model Policies* at 10.

<sup>7</sup> *Id.* at 5.