

VIRGINIA: IN THE CIRCUIT COURT FOR THE COUNTY OF YORK

Jane DOE, by Jill DOE)
)
Plaintiff,)
)
v.) **Case No. CL24-3989**
) _____
VIRGINIA DEPARTMENT OF EDUCATION,)
)
Defendant.)

VERIFIED COMPLAINT

1. This action challenges the Virginia Department of Education’s (“VDOE’s”) issuance of a guidance document titled “Model Policies on Ensuring Privacy, Dignity, and Respect for All Students and Parents in Virginia’s Public Schools,” dated July 18, 2023 (hereinafter “2023 Model Policies”). In issuing the 2023 Model Policies, VDOE ignored its statutory mandate to consider evidence-based best practices in formulating guidance for schools on how to create educational environments that include, protect, and nurture all students. Instead, in furtherance of an ideological and political agenda, the VDOE directed schools to adopt policies that discriminate against and harm transgender and gender non-conforming students.

2. As a result of VDOE’s issuance of the 2023 Model Policies, Plaintiff has received harmful and discriminatory treatment at school because she is transgender. The 2023 Model Policies also put Plaintiff, and other transgender students like her, at risk of further harassment, public disclosure of her transgender identity, bullying, abuse, and social stigma at school.

3. Plaintiff therefore asks this Court to set aside the 2023 Model Policies under the Virginia Administrative Process Act (“VAPA”), Virginia Code. § 2.2-4000 *et seq.* In addition,

pursuant to Virginia Code § 8.01-184, Plaintiff asks the Court to issue a declaratory judgment that the 2023 Model Policies are contrary to law, and that no school district is required to adopt policies consistent with them.

THE PARTIES

4. Plaintiff Jane Doe¹ is a resident of York County and attends a York County Public Schools high school. Plaintiff sues by her mother, Jill Doe, as Next Friend. Plaintiff is a transgender girl and has a gender dysphoria² diagnosis.

5. Defendant Virginia Department of Education is the administrative agency for Virginia’s public schools.³ VDOE is responsible for promulgating model policies on the treatment of transgender students pursuant to Virginia Code § 22.1-23.3. It most recently issued such model policies on July 18, 2023.

JURISDICTION AND VENUE

6. This Court has subject matter jurisdiction pursuant to Virginia Code §§ 8.01-184, 2.2-4002.1, and 2.2-4027.

7. Venue is proper in this judicial district pursuant to Virginia Code § 8.01-261 because the petition is brought in the Circuit Court of the county in which the Plaintiff resides and attends school.

¹ Plaintiff and her Next Friend proceed by the pseudonyms “Jane Doe” and “Jill Doe” pursuant to Virginia Code § 8.01-15.1.

² “Gender dysphoria” is described as “psychological distress that results from an incongruence between one’s sex assigned at birth and one’s gender identity.” American Psychiatric Association, What is Gender Dysphoria?, <https://www.psychiatry.org/patients-families/gender-dysphoria/what-is-gender-dysphoria>.

³ See Article VIII of the Constitution of Virginia; Title 22.1 of the Code of Virginia.

FACTS

Transgender Youth Need Inclusive and Affirming Policies to Succeed in School

8. Transgender youth face extreme rates of discrimination and mistreatment in schools, which can have devastating impacts on their mental health and their ability to achieve academic success.⁴

9. According to a 2021 survey of students who identify as LGBTQ+ in Virginia, 56% of LGBTQ+ students in Virginia’s schools experienced verbal harassment and 15% experienced physical harassment due to their gender expression.⁵ The same study found that only 11% of the students surveyed attended schools that had a policy or official guidelines to support transgender and nonbinary students.⁶

10. According to a 2023 nationwide survey of LGBTQ+ young people, 64% said that they have experienced discrimination in the past year due to their gender identity.⁷

11. LGBTQ+ youth generally, including transgender youth, experience elevated suicide risk because of anti-LGBTQ+ victimization. In one survey, half of transgender and nonbinary young people seriously considered attempting suicide in the past year, and nearly one in five transgender and nonbinary young people surveyed had attempted suicide in the past year.⁸ Youth who had experienced discrimination in the past year were more than twice as likely to

⁴ See, e.g., *Grimm v. Gloucester Cty. Sch. Bd.*, 972 F.3d 586, 612 (4th Cir. 2020), *cert. denied*, 141 S. Ct. 2878 (2021) (“Transgender people frequently experience harassment in places such as schools (78%), medical settings (28%), and retail stores (37%), and they also experience physical assault in places such as schools (35%) and places of public accommodation (8%).”).

⁵ GLSEN, *2021 National School Climate Survey State Snapshot: Virginia 2 (2021)* [hereinafter “2021 Virginia State Snapshot”], available at https://maps.glsen.org/wp-content/uploads/2023/02/GLSEN_2021_NSCS_State_Snapshots_VA.pdf.

⁶ *Id.* at 3.

⁷ Trevor Project, *2023 U.S. National Survey on the Mental Health of LGBTQ Young People*, at 16 [hereinafter “Trevor Project”] https://www.thetrevorproject.org/survey-2023/assets/static/05_TREVOR05_2023survey.pdf.

⁸ *Id.* at 6.

attempt suicide than those who did not.⁹ Three in five transgender and nonbinary young people reported experiencing symptoms of depression, and nearly three-quarters of transgender and nonbinary young people reported experiencing symptoms of anxiety.¹⁰

12. Another study found that “gender minority students had significantly higher rates of depression, suicidal ideation, and suicide attempts relative to cisgender students.”¹¹

13. Among transgender students, higher rates of harassment and victimization are also related to worse educational outcomes, including higher rates of absenteeism, lower academic achievement, and reduced educational aspirations (*i.e.*, not wanting or planning to pursue a college education).¹²

14. As transgender and nonbinary students are subjected to increased discriminatory policies, verbal harassment, and physical assault at school, research shows that their grade point averages drop from a B average to a C average.¹³

15. LGBTQ+ youth pay attention to the discussion or enactment of anti-LGBTQ laws and policies, and hearing about these efforts contributes to significantly worse mental health for LGBTQ+ youth.¹⁴

⁹ *Id.* at 17.

¹⁰ *Id.* at 8.

¹¹ Nat’l Inst. of Health, *Differences in Suicide Risk Among Subgroups of Sexual and Gender Minority College Students* (Sept. 8, 2020), <https://www.nimh.nih.gov/news/science-news/2020/differences-in-suicide-risk-among-subgroups-of-sexual-and-gender-minority-college-students#:~:text=The%20results%20showed%20that%20gender,%2C%20transgender%20relative%20to%20gender%20queer.>

¹² Emily A. Greytak et al., *Harsh Realities: The Experiences of Transgender Youth in Our Nation’s Schools* 25 (2009), available at <https://files.eric.ed.gov/fulltext/ED505687.pdf>; Joseph G. Kosciw et al., GLSEN, *The 2013 National School Climate Survey: The Experiences of Lesbian, Gay, Bisexual, and Transgender Youth in Our Nation’s Schools*, (2014) [hereinafter “2013 National School Climate Survey”], available at <https://www.glsen.org/sites/default/files/2020-03/GLSEN-2013-National-School-Climate-Survey-Full-Report.pdf>.

¹³ Greytak et al., at 27; *see also Grimm*, 972 F.3d at 597 (“Unsurprisingly, then, harassment of transgender students is also correlated with academic success: students who experienced greater harassment had significantly lower grade point averages.”).

¹⁴ *See* Trevor Project at 13 (“Nearly 1 in 3 LGBTQ young people said their mental health was poor most of the time or always due to anti-LGBTQ policies and legislation.”).

16. However, transgender youth who have support at home and at school have better outcomes. For example, transgender and nonbinary young people who live with people who respect their gender-affirming pronouns, and who attend gender-affirming schools, had lower rates of suicide.¹⁵

17. Evidence also shows that implementing protective and affirming policies at school improves educational outcomes for transgender youth. Students that attend Virginia schools with “affirming LGBTQ+ resources and supports report experiencing lower rates of victimization and absenteeism, and higher academic achievement.”¹⁶

Virginia Enacted a Law Requiring School Boards to Adopt Policies Protecting Transgender Students

18. Recognizing the need for greater inclusion of transgender students in Virginia’s public schools, in February 2020, the Virginia General Assembly passed legislation that was intended to “ensure the safety and dignity of all students in Virginia, regardless of how they identify or where they live.”¹⁷

19. The bill, signed into law by Governor Ralph Northam on March 4, 2020, and codified as Virginia Code § 22.1-23.3, establishes a framework for the VDOE to provide guidance to school districts on practices that will lead to better outcomes for transgender students in public elementary and secondary schools. The statute requires the VDOE to promulgate model policies “concerning the treatment of transgender students in public elementary and secondary schools that address common issues regarding transgender students in accordance with evidence-based best practices....”¹⁸

¹⁵ *Id.* at 23-25.

¹⁶ 2021 Virginia State Snapshot, at 4.

¹⁷ Press Release, Office of The Governor, Governor Northam Signs 49 Bills into Law (Mar. 5, 2020), <https://bluevirginia.us/2020/03/governor-northam-signs-49-bills-into-law>.

¹⁸ Va. Code Ann. § 22.1-23.3(A).

20. The statute requires the model policies to address the following topics:
- Compliance with applicable nondiscrimination laws;
 - Maintenance of a safe and supportive learning environment free from discrimination and harassment for all students;
 - Prevention of and response to bullying and harassment;
 - Maintenance of student records;
 - Identification of students;
 - Protection of student privacy and the confidentiality of sensitive information;
 - Enforcement of sex-based dress codes; and
 - Student participation in sex-specific school activities and events and use of school facilities. Activities and events do not include athletics.¹⁹

21. The statute provides that school districts must “adopt policies that are consistent with but may be more comprehensive than the model policies developed by” the VDOE.²⁰

VDOE Developed Evidence-Based Guidance in 2021

22. In response to the statute’s directive to develop evidence-based model policies, the VDOE convened an advisory committee that consisted of multiple stakeholders and experts from across the Commonwealth, including school social workers, nurses, psychologists, and administrators representing diverse geographic regions; VDOE officials; local school board members; LGBTQ+ experts; parents; and students.²¹

23. The advisory committee met several times, beginning in June 2020. At these meetings, stakeholders and experts were divided into small groups to discuss and offer feedback on topics that the model policies were statutorily required to address. The drafting process involved multiple iterations, and drafts were circulated among the advisory committee members for comment and proposed edits.

¹⁹ *Id.*

²⁰ Va. Code Ann. § 22.1-23.3(B).

²¹ Va. Dep’t of Educ., *2021 Model Policies for the Treatment of Transgender Students in Virginia’s Public Schools* 3-4 (Apr. 2, 2021) [hereinafter “2021 Model Policies”], attached as Exhibit 1.

24. In advance of advisory committee meetings, VDOE provided members with a host of resources to review, including examples of model and existing policies that had been developed and implemented by other school systems; recommendations from educational, medical, and mental health organizations; and guidance regarding relevant state and federal law.²² Committee members were also invited provide their own additional resources for fellow members to consider.

25. On April 2, 2021, VDOE issued its final Model Policies for the Treatment of Transgender Students in Virginia’s Public Schools (“2021 Model Policies”). These policies addressed each topic required by the statute and provided several recommendations for how school districts should examine and revise their policies on each topic.

26. The 2021 Model Policies detailed the scientific research and evidence that informed their recommended best practices.²³

27. The evidentiary basis for the 2021 Model Policies is cited throughout the document and demonstrates the rationale behind the recommended policies. For example:

- “A recent study found that inclusive policies that focus on sexual orientation and gender identity were associated with more supportive school environments for LGBTQ+ youth and had a direct association with less truancy.”²⁴
- “A 2019 national survey by GLSEN found that 84 percent of transgender youth feel unsafe at school, and those who experience victimization have significantly lower GPAs, are more likely to miss school out of concern for their safety, and are less likely to plan on continuing their education.”²⁵

²² See, e.g., 2021 Model Policies, app. A: Resources, at 22-25.

²³ *Id.* at 26-27 (citing references).

²⁴ 2021 Model Policies, at 9 (citing Jack K. Day et al., *Safe and supportive schools for LGBT youth: Addressing educational inequities through inclusive policies and practices*, 74 J. Sch. Psych. 29, 29-43 (2019)).

²⁵ *Id.* (citing Joseph G. Kosciw et al., GLSEN, *The 2019 National School Climate Survey: The Experiences of Lesbian, Gay, Bisexual, Transgender, and Queer Youth in Our Nation’s Schools*, (2020)).

- “[A] recent study found that socially transitioned transgender children who are supported in their gender identity have no elevations in depression and only minimal elevations in anxiety relative to population averages.”²⁶
- “Research has shown that transgender youth with supportive families experience a 52 percent decrease in recent suicidal thoughts and 46 percent decrease in suicide attempts” and that “chosen name used in more contexts was associated with lower depression, suicidal ideation, and suicidal behavior. Thus, school staff should be prepared to support the safety and welfare of transgender students when their families are not affirming.”²⁷
- “[S]chool divisions may consider ensuring LGBTQ+-inclusive curricula. According to GLSEN, schools with LGBTQ+-inclusive and affirming curricula have students who have less-hostile school experiences, increased feelings of connectedness to the school community, better academic and mental health outcomes, and are less likely to miss school.”²⁸

28. On July 30, 2021, Virginia’s Superintendent of Public Instruction (the “Virginia Superintendent”) sent “Superintendent’s Memo #202-21” to all school district superintendents containing additional guidance about the adoption of policies by local school boards.²⁹ The subject of the memo was “Complying with House Bill 145 (2020) and Senate Bill 161 (2020) Regarding Model Policies Concerning the Treatment of Transgender Students.”

29. In this memo, the Virginia Superintendent explained that, after the 2021 Model Policies were finalized, the U.S. Supreme Court declined to review the ruling of the U.S. Fourth Circuit Court of Appeals in *Grimm v. Gloucester County School Board*, 972 F.3d 586 (4th Cir. 2020) that a school board’s policy requiring students to use bathrooms based on their “biological sex” or birth-assigned sex violated the Equal Protection Clause of the U.S. Constitution and

²⁶ *Id.* at 10 (citing Kristina R. Olson et al., *Mental Health of Transgender Children Who Are Supported in Their Identities*, 137 *Pediatrics* 2015, 2015-3223 (2016), <https://pubmed.ncbi.nlm.nih.gov/26921285/>).

²⁷ *Id.* at 14 (citing Caitlin Ryan et al., *Family Acceptance in Adolescence and the Health of LGBT Young Adults*, 23 *J. Child & Adolescent Psych. Nursing* 205, 205-213 (2010); Stephen T. Russell et al., *Chosen Name Use Is Linked to Reduced Depressive Symptoms, Suicidal Ideation, and Suicidal Behavior Among Transgender Youth*, 63 *J. Adolescent Health* 503, 503-505 (2018)).

²⁸ 2021 Model Policies, at 21 (citing Kosciw, *supra*).

²⁹ Memorandum #202-21 from James F. Lane, Va. Dep’t of Educ. Superintendent of Pub. Instruction, to Div. Superintendents (July 30, 2021) [hereinafter “Superintendent’s Memo #202-21”], available at <https://www.doe.virginia.gov/home/showpublisheddocument/9646/638025982697870000> and attached as Exhibit 2.

constituted discrimination on the basis of sex in violation of Title IX.³⁰ Because the 2021 Model Policies provided guidance consistent with the Fourth Circuit’s holdings in *Grimm*, and because a lawsuit challenging the 2021 Model Policies had been dismissed, the Superintendent determined that the mandate to implement the provisions of Virginia Code § 22.1-23.3 remained in effect.³¹

30. The Superintendent’s Memo # 202-21 further clarified the requirements of Virginia Code § 22.1-23.3, stating, in part:

The requirement that local school boards adopt policies on the treatment of transgender students consistent with VDOE guidance by the 2021-2022 school year was codified by legislation action. Like all other mandates on local school boards resulting from General Assembly action, local school boards must fulfill this directive in order to be in compliance with state law. *Local school boards that elect not to adopt policies assume all legal responsibility for noncompliance.*³²

VDOE Issues New Model Policies After a Change in Administration

31. On January 15, 2022, a new Governor of Virginia, Glenn Youngkin, was sworn into office. Leading up to the election, Governor Youngkin made the issue of “parents’ rights” in public school a central focus of his campaign.³³

³⁰ Superintendent’s Memo #202-21, at 1.

³¹ *Id.*

³² *Id.* at 2.

³³ See, e.g., Eva McKend & Dan Merica, *Virginia Republicans seize on parental rights and schools fight in final weeks of campaign*, CNN (Oct. 7, 2021, 4:01 PM), <https://www.cnn.com/2021/10/07/politics/glenn-youngkin-parental-rights-education-strategy/index.html>; Margaret Barthel, *McAuliffe And Youngkin Spar Over Vaccine Mandates, Education Policy In Final Gubernatorial Debate*, DCist (Sept. 29, 2021, 12:09 PM), <https://dcist.com/story/21/09/29/mcauliffe-youngkin-spar-over-vaccine-mandates-education-policy-final-gubernatorial-debate/> (reporting that during a debate, Youngkin stated that in considering policies regarding transgender children in schools, local school districts should “include concepts of safety and privacy and respect in the discussion, and we must demand they include parents in this dialogue.”).

32. On September 26, 2022, the VDOE published a proposed revision of the 2021 Model Policies.³⁴ This draft was titled “2022 Model Policies on the Privacy, Dignity and Respect for All Students and Parents in Virginia’s Public Schools.”³⁵

33. Pursuant to Virginia Code § 2.2-4002.1(B), members of the public were able to provide comment on the proposed revised guidance document³⁶ for a 30-day period via the Virginia Regulatory Town Hall Website.

34. VDOE received over 70,000 comments on the proposal, many raising concerns that the draft policies were contrary to law, and would harm, rather than protect, transgender and nonbinary students in Virginia schools.

35. Professional medical and mental health organizations submitted detailed comments opposing the proposed revisions on the basis that they would cause harm to transgender youth. These comments cited evidence around best practices to safeguard the health and well-being of those young people. These organizations included the American Foundation for Suicide Prevention, the Virginia Academy of School Psychologists, the Virginia Chapter of the American Academy of Pediatrics, the Virginia Chapter of the National Association of Social Workers, and the Arlington Mental Health & Disability Alliance.³⁷

36. Educational leaders and advocacy organizations submitted comments detailing the ways that the proposed revisions would undermine the ability of transgender youth to access

³⁴ 39 Va. Reg. Regs. 75 (Sept. 26, 2022), available at <https://register.dls.virginia.gov/vol39/iss03/v39i03.pdf>.

³⁵ *Id.*

³⁶ A “guidance document” is defined in the Virginia Administrative Process Act (Va. Code Ann. § 2.2-4000 et seq.) by reference to the definition found in Virginia Code § 2.2-4101, which states, in relevant part: “‘Guidance document’ means any document developed by a state agency or staff that provides information or guidance of general applicability to the staff or public to interpret or implement statutes or the agency’s rules or regulations, excluding agency minutes or documents that pertain only to the internal management of agencies.” Va. Code Ann. § 2.2-4001. At least one Virginia circuit court has held that the 2021 Model Policies met the definition of “guidance document.” *See Christian Action Network v. Va. Dep’t of Educ.*, No. CL21000282-00, 2021 WL 8314573, at *3 (Va. Cir. Ct. July 27, 2021).

³⁷ These comments are attached collectively as Exhibit 4.

public education. These organizations included the Virginia Education Association, the National Education Association, Voices for Virginia’s Children, the Alexandria City School Board, and Campaign for Our Shared Future.³⁸

37. Nonprofit organizations who advocate for the rights of LGBTQ+ individuals, including transgender youth, uniformly opposed the proposed revisions and submitted detailed comments explaining the legal, educational, physical, and psychological harms the policies were likely to cause. Those organizations included Equality Virginia, Lambda Legal Defense and Education Fund, the Pride Liberation Project, the Virginia Equality Bar Association, the Rainbow Youth Project USA, the Center for Constitutional Rights, the National Women’s Law Center (on behalf of itself and 37 other gender justice and civil rights organizations), and the Washington Lawyers’ Committee for Civil Rights and Urban Affairs.³⁹

38. On July 18, 2023, VDOE published its final guidance document entitled “Model Policies on Ensuring Privacy, Dignity, and Respect for All Students and Parents in Virginia’s Public Schools.”⁴⁰ This document officially rescinded the 2021 Model Policies, established “Guiding Principles” for school districts, and provided a “Sample Policy” that school districts could adopt verbatim.⁴¹

39. Also on July 18, 2023, in conjunction with its issuance of the final guidance document, VDOE published its Agency Response to the public comments on the proposed

³⁸ These comments are attached collectively as Exhibit 5.

³⁹ These comments are attached collectively as Exhibit 6.

⁴⁰ Va. Dep’t of Educ., *2023 Model Policies on Ensuring Privacy, Dignity, and Respect for All Students and Parents in Virginia’s Public Schools* (Jul. 2023) [hereinafter “2023 Model Policies”], available at <https://www.doe.virginia.gov/home/showpublisheddocument/46509/638252918535370000> and attached as Exhibit 3.

⁴¹ 2023 Model Policies, at 1, 2, 12.

revisions.⁴² This response dismissed the common concerns raised by the public comments with little additional information, evidence, or rationale.

40. Illustrative examples of conclusory and dismissive responses to public comments include:

- In response to comments that stated that the proposed guidance was not evidence-based, VDOE cited no evidence that it relied on in formulating the guidance, and simply stated in a conclusory manner that “[t]he Department believes that the 2023 Model Policies reflect best practices in this area.”⁴³
- In response to comments that the proposed revisions did not comport with the legislative intent of the authorizing statute to protect transgender students, VDOE did not even attempt to demonstrate that its goal was in fact to protect transgender students. It instead explained that “[s]ection 22.1-23.3 of the Code of Virginia requires the agency to develop model policies ‘concerning the treatment of transgender students in public elementary and secondary schools that address common issues regarding transgender students in accordance with evidence-based best practices,’ including specified topics. The Department has fulfilled its obligation.”⁴⁴
- In response to comments that that the proposed revisions failed to maintain a safe learning environment for all students, the VDOE’s full response to this important critique was one of complete dismissal: “The Department asserts that the 2023 Model Policies do assist local school divisions in their efforts to maintain a safe and supporting learning environment free from discrimination and harassment for all students, as required by Code of Virginia § 22.1-23.3. For instance, Model Policies direct school divisions to inform parents of any serious bullying incident affecting their child within 24 hours of learning of the allegation of bullying.”⁴⁵
- In response to comments that objected to the proposed revisions’ focus on parents’ rights rather than the rights of transgender students, VDOE’s response did not explain what evidence supported the guidance document’s focus on parents’ rights, but simply stated, “Nothing in Code of Virginia § 22.1-23.3 requires the Department to refuse to consider the fundamental rights of all

⁴² Va. Dep’t of Educ., *Model Policies on Ensuring Privacy, Dignity, and Respect for All Students and Parents in Virginia’s Public Schools: Agency Response to Public Comment Forum 1953* (July 18, 2023) [hereinafter “Agency Response”], available at <https://www.doe.virginia.gov/home/showdocument?id=46507&t=638252780336192455> and attached as Exhibit 4.

⁴³ *Id.* at 3.

⁴⁴ *Id.* at 4.

⁴⁵ *Id.*

parents. The Department disagrees that taking this important right into account is unlawful.”⁴⁶

41. Highlighting the 2023 Model Policies’ focus on parents’ rights, Governor Youngkin announced the policies by stating on social media that: “The VDOE updated model policies reaffirm my administration’s continued commitment to ensure that every parent is involved in conversations regarding their child’s education, upbringing, and care.”⁴⁷

42. On August 18, 2023, the Virginia Superintendent issued a memo to division superintendents informing them that they “must comply” with the statutory directive to adopt policies consistent with the 2023 Model Policies “in order to be in compliance with state law,” and that districts “that elect not to adopt policies consistent with those released by the Department for the upcoming school year assume all legal responsibility for noncompliance.”⁴⁸

43. On August 23, 2023, Virginia Attorney General Jason Miyares, in response to an inquiry from Governor Youngkin, issued an official advisory opinion that the 2023 Model Policies “comply with the Equal Protection Clause, Title IX, and the [Virginia Human Rights Act], and that pursuant to Code § 22.1-23.3, local school boards are required to adopt policies that are consistent with them.”⁴⁹

44. Following the issuance of the Attorney General Opinion, the Virginia Superintendent issued a second memo to division superintendents notifying them of the Attorney General Opinion and highlighting that it “makes clear – schools [sic] boards *must* adopt policies

⁴⁶ *Id.* at 2.

⁴⁷ @GlennYoungkin, Twitter (July 20, 2023, 11:33 AM), <https://twitter.com/GlennYoungkin/status/1682051071760384003>.

⁴⁸ Memorandum #138-23 from Lisa Coons, Va. Dep’t of Educ. Superintendent of Pub. Instruction, to Div. Superintendents, (Aug. 18, 2023) [hereinafter “Superintendent’s Memo #138-23”], available at <https://www.doe.virginia.gov/home/showpublisheddocument/47936/638279689153970000> and attached as Exhibit 5.

⁴⁹ Va. Off. Att’y Gen. Op. No. 23-042, *1 (Aug. 23, 2023) [hereinafter “Attorney General Opinion”], available at <https://www.oag.state.va.us/files/Opinions/2023/23-042-Youngkin-issued.pdf> and attached as Exhibit 6.

consistent with the 2023 Model Policies, per *Code of Virginia* § 22.1-23.3.”⁵⁰ The Superintendent instructed school boards to “review their policies to ensure consistency and amend or supplement to the extent any policies are inconsistent on critical topics[.]”⁵¹ The Superintendent further cautioned school divisions that school boards that did not adopt policies consistent with the 2023 Model Policies “assume legal responsibility for noncompliance” and “should consider the potential costs of civil litigation or other associated liabilities in evaluating the consequences of their actions.”⁵²

The 2023 Model Policies Do Not Comply with the Authorizing Statute

45. As described herein, the 2023 Model Policies do not comply with Virginia Code § 22.1-23.3 and are contrary to law because: (1) they do not reflect evidence-based best practices that would create and maintain “a safe and supportive learning environment free from discrimination and harassment for all students” as required by Virginia Code § 22.1-23.3; (2) they exceed the VDOE’s statutory authority; and (3) they fail to adequately guide schools toward compliance with relevant non-discrimination laws.

The 2023 Model Policies Are Not Evidence-Based

46. Although any guidance issued by VDOE under Virginia Code § 22.1-23.3 is required to reflect evidence-based best practices, the 2023 Model Policies disregard the multi-disciplinary consensus reflected in the 2021 Model Policies regarding the best practices that have been shown to ensure that transgender students have equal access to education in a manner free from discrimination, fear, intimidation, and bullying. In contrast to the numerous studies,

⁵⁰ Memorandum #139-23 from Lisa Coons, Va. Dep’t of Educ. Superintendent of Pub. Instruction to Div. Superintendents, (Aug. 25, 2023) [hereinafter “Superintendent’s Memo #139-23”], <https://www.doe.virginia.gov/home/showpublisheddocument/48191/638285764930870000>.

⁵¹ *Id.*

⁵² *Id.*

surveys, resources, and guidance referenced in the 2021 Model Policies, the 2023 Model Policies do not cite any scientific research or other evidence that support the guidance provided to schools or the rationale for the significant changes from the 2021 Model Policies.⁵³

47. For example, based on evidence that addressing transgender youth by their chosen name improves mental health outcomes, the 2021 Model Policies directed schools to allow students to self-identify by name and pronouns without providing any supporting documentation, and directed school personnel to address students by their affirming name and pronouns.⁵⁴

48. Research indicates that using affirming names and pronouns is a critical first step to supporting transgender and nonbinary students' overall wellbeing and contributes to a positive school climate.⁵⁵

49. In contrast, the 2023 Model Policies instruct schools to do the opposite: the sample policy states that school division personnel “shall refer to each student using only (i) the name that appears in the student’s official record, or (ii) if the student prefers, using any nickname commonly associated with the name that appears in the student’s official record,” and “shall refer to each student using only the pronouns appropriate to the sex appearing in the student’s official record - that is, male pronouns for a student whose sex is male, and female pronouns for a student whose sex is female.”⁵⁶

⁵³ See, e.g., 2023 Model Policies, at 9-11 (listing resources related to parental engagement and bullying prevention generally, but listing no resources specific to transgender or LGBTQ+ youth).

⁵⁴ 2021 Model Policies, at 13-14 (citing Russell et al., *supra* note 24, at 503-505, which found that transgender and nonbinary youth who are able to use their chosen names not only with friends, but also at school, at work, and/or at home exhibit 29% less suicidal ideation, and 56% less suicidal behavior).

⁵⁵ Amanda Pollitt et al., *Predictors and mental health benefits of chosen name use among transgender youth*, 53 J. Youth & Soc’y 320, 320-341 (2019), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7678041/> (“Chosen name use was associated with large reductions in negative health outcomes and relatively smaller improvements in positive mental health outcomes.”).

⁵⁶ 2023 Model Policies, at 14.

50. This policy therefore prohibits schools from respecting a student’s self-identification and requires school personnel to address students by the name appearing in the student’s official record and the pronouns associated with the student’s sex listed in the official record, unless (and only if) the student’s parent submits a written request that school personnel identify the student by a specific name and/or pronouns.⁵⁷

51. Even when a parent submits such a request, the 2023 Model Policies prohibit schools from “compel[ling] [School Division] personnel or other students to address or refer to students in any manner that would violate their constitutionally protected rights.”⁵⁸

52. The change from the 2021 Model Policies is not based on any evidence, and is supported only by the following statement: “Practices such as compelling others to use preferred pronouns is premised on the ideological belief that gender is a matter of personal choice or subjective experience, not sex. Many Virginians reject this belief.”⁵⁹

53. The 2023 Model Policies provide no guidance to schools on how to accommodate transgender students when school personnel refuse to use their affirming name or pronouns.

54. The 2021 Model Policies recommend that schools “use the name and gender consistent with the student’s gender identity on other school records or documents” upon the request of a student or their parents.⁶⁰ This policy recognizes that failing to include a student’s “name and gender consistent with the gender identity may pose risks of inadvertently disclosing

⁵⁷ *Id.* at 14.

⁵⁸ *Id.* at 15.

⁵⁹ *Id.* at 5.

⁶⁰ 2021 Model Policies, at 16.

the student’s gender identity as well as cause potential emotional trauma for a transgender student.”⁶¹

55. In contrast, the 2023 Model Policies require parents to submit legal documentation (such as an amended birth certificate) to change a student’s record to reflect the name or pronouns that correspond with the student’s gender identity.⁶² The 2023 Model Policies do not provide any guidance on the use of affirming name and pronouns in the student record without such documentation, and cite no evidence that supports the change from the 2021 Model Policies.

56. The 2021 Model Policies advised school districts that sharing information about a student’s gender identity without their knowledge or consent “could expose a student to harassment and abuse from peers or adults within the school community.”⁶³ To minimize this harm, the 2021 Model Policies recommend that school districts “develop solutions to support a transgender student’s wishes for privacy ... [and] to avoid the inadvertent disclosure of” students’ legal names or sex assigned at birth, if different from their gender identity and name used at school.⁶⁴

57. In contrast, the 2023 Model Policies prohibit schools from educating school personnel on the risks that intentional or accidental disclosure of a student’s gender identity pose to transgender students.⁶⁵

⁶¹ *Id.* at 14.

⁶² 2023 Model Policies, at 14.

⁶³ 2021 Model Policies, at 11.

⁶⁴ *Id.* at 14-15.

⁶⁵ 2023 Model Policies, at 15 (“No policy, guidance, training, or other written material issued by the [School Division] may encourage or instruct teachers to conceal material information about a student from the student’s parent, including information related to gender.”).

The 2023 Model Policies Exceed the Scope of the Authorizing Statute

58. The 2023 Model Policies exceed the scope of the authorizing statute. Instead of providing guidance that reflects evidence-based best practices on the treatment of transgender students, the VDOE focused the 2023 Model Policies on the rights of parents, even though the authorizing statute does not instruct the VDOE to address this topic. For example, the 2023 Model Policies note that they “reflect the Department’s confidence in parents to prudently exercise their fundamental right under the Fourteenth Amendment and Virginia law to direct the upbringing, education, and control of their children.”⁶⁶ They instruct schools to draft policies “to safeguard parents’ rights with respect to their child, and to facilitate the exercise of those rights.”⁶⁷ In contrast, the authorizing statute makes no reference to parents’ rights.

59. Similarly, Virginia Code § 22.1-23.3 specifies that the VDOE should not address transgender students’ participation in athletics in the Model Policies.⁶⁸ In accordance with this directive, the 2021 Model Policies noted that “[a]thletic participation regulated by the Virginia High School League (VHSL) or another organization such as the Virginia Scholastic Rowing Association (VASRA), as well as middle school athletics, shall be in compliance with policies and rules outlined by those organizations.”⁶⁹

60. Notwithstanding this clear statutory directive, the VDOE chose to promulgate a model policy regarding transgender students’ participation in athletics. That policy establishes a general rule of athletic participation on the basis of “biological sex.”⁷⁰

⁶⁶ *Id.* at 5.

⁶⁷ *Id.* at 2.

⁶⁸ Va. Code Ann. § 22.1-23.3(A)(8) (“The Department of Education shall develop and make available to each school board model policies concerning... Student participation in sex-specific school activities and events and use of school facilities. Activities and events do not include athletics.”).

⁶⁹ 2021 Model Policies, at 18.

⁷⁰ 2023 Model Policies, at 16 (“For any athletic program or activity that is separated by sex, the appropriate participation of students shall be determined by sex rather than gender or gender identity. [School Division] shall provide reasonable modifications to this policy only to the extent required by law.”).

The 2023 Model Policies Do Not Provide Adequate Guidance on Compliance with Non-Discrimination Law:

61. The authorizing statute requires VDOE to promulgate guidance for schools on how to comply with “applicable nondiscrimination laws” in their treatment of transgender students.⁷¹ The 2021 Model Policies met this requirement by, for example, recognizing that LGBTQ+ students are a protected class under anti-bullying, harassment, and discrimination laws.⁷²

62. The 2023 Model Policies do not explicitly recognize that LGBTQ+ students are a protected class under applicable nondiscrimination laws. Further, the 2023 Model Policies do not provide adequate guidance – or any guidance – to schools regarding the requirements of applicable non-discrimination laws and how to comply with those requirements. Instead, the 2023 Model Policies simply direct schools to adopt the following statement: “The [School Division] complies with all applicable federal and state nondiscrimination laws, including Title IX of the Education Amendments of 1972, 20 U.S.C. §§ 1681-1688 and the Virginia Human Rights Act, Code of Virginia § 2.2-3900.”⁷³

63. To the extent they provide any guidance to schools, the 2023 Model Policies direct them to discriminate against transgender students, in direct opposition to the statutory directive. For example, the 2023 Model Policies create a default rule that limits participation in sex-segregated activities and access to sex-segregated facilities based on “biological sex,” except “to the extent that federal law otherwise requires.”⁷⁴ In other words, the 2023 Model Policies

⁷¹ Va. Code Ann. § 22.1-23.3(A)(1).

⁷² 2021 Model Policies, at 11 (“The [School Division] prohibits any and all discrimination, harassment, and bullying based on an individual’s actual or perceived race, color, national original, religion, sex, *sexual orientation*, *gender identity*, disability, or any other characteristic protected by law.”) (emphasis added).

⁷³ 2023 Model Policies, at 12.

⁷⁴ *Id.* at 16.

prohibit schools from allowing transgender students access to activities and facilities that correspond with their gender identity unless schools are required to do so under federal law. But the 2023 Model Policies do not explain, describe, or identify the circumstances under which such access would be required by federal law, or point school districts to any other guidance that might do so.

64. In contrast to the 2023 Model Policies, the 2021 Model Policies noted that “[s]tudents have the right to equitable access to programs, activities, and events,” and that “[i]t can be emotionally harmful for a transgender student to be questioned regarding the use of restrooms and facilities.”⁷⁵ Thus, the 2021 Model Policies directed schools to comply with federal law by allowing transgender students access to facilities that correspond with their gender identity.⁷⁶

65. Because the 2023 Model Policies provide no guidance around the requirements of federal law, school districts’ adherence to the sample policy regarding facility and activity access will inevitably lead schools to violate, rather than comply with, federal nondiscrimination law. Federal courts, including the Fourth Circuit Court of Appeals, have squarely held that policies that dictate access to facilities and activities based only on “sex” or “biological sex” discriminate against transgender students.⁷⁷

⁷⁵ 2021 Model Policies, at 17-18.

⁷⁶ *Id.* at 19 (“Access to facilities such as restrooms and locker rooms that correspond to a student’s gender identity shall be available to all students. Upon request, single-user or gender-inclusive facilities or other reasonable alternatives shall be made available to any student who seeks privacy. Any options offered shall be non-stigmatizing and minimize lost instructional time.”).

⁷⁷ *See, e.g., Grimm*, 972 F.3d at 586, *cert. denied*, --- S. Ct. 2878 (2021) (holding that school board’s policy requiring students to use bathrooms based on their “biological gender” unlawfully discriminated against plaintiff in violation of Title IX); *A.C. ex rel. M.C. v. Metro. Sch. Dist. of Martinsville*, 75 F.4th 760 (7th Cir. 2023), *cert. denied*, ___ S. Ct. ___, 2024 WL 156480 (U.S. Jan. 16, 2024) (upholding preliminary injunction enjoining school districts from restricting transgender students’ use of restrooms, based on likelihood of success on merits of Title IX claims); *Hecox v. Little*, 79 F.4th 1009 (9th Cir. 2023) (upholding preliminary injunction against Idaho’s categorical ban on transgender girls and women participating in women’s athletics, based on likelihood of success on merits of Equal Protect Clause claim); *Doe v. Horne*, No. CV-23-00185-TUC-JGZ, 2023 WL 4661831, at *1 (D. Ariz. July

66. Instead of helping schools foster safe and inclusive education environments, the 2023 Model Policies threaten transgender students' identity, ostracize them, deprive them of the same opportunities afforded to cisgender students, and send the clear message that transgender students "should exist only at the margins of society."⁷⁸

**Plaintiff Has Experienced Harm at School as a
Direct Result of the 2023 Model Policies**

67. Plaintiff is a transgender girl and has a gender dysphoria diagnosis. Plaintiff has used her current gender affirming name and pronouns⁷⁹ since around October 2020.

68. Prior to the 2023-2024 school year, Plaintiff's teachers uniformly addressed her by her affirming name and pronouns. However, after the issuance of the 2023 Model Policies, Plaintiff was singled out among her classmates by a teacher who refused to use her affirming name and pronouns and referred to her differently than other students by only using her last name.

69. On August 24, 2023, a few days before the first day of school for students,⁸⁰ the York County School Board voted to amend its policy regarding student records to conform with the 2023 Model Policies.⁸¹ Specifically, it deleted language consistent with the 2021 Model

20, 2023) (granting preliminary injunction against Arizona's categorical ban on athletic participation, based on likelihood of success on merits under the Equal Protection Clause and Title IX claims).

⁷⁸ *Grimm*, 972 F.3d at 626.

⁷⁹ "Gender affirming" refers to the name and pronouns that correspond to Plaintiff's gender identity, rather than the name and pronouns assigned to her at birth. Plaintiff has not legally changed her name or gender marker.

⁸⁰ York Cty. Sch., *York County School Division 2023-24 Student Calendar*,

<https://yorkcountyschools.org/docs/studentCalendar.pdf> (showing the first day of school as August 28, 2023).

⁸¹ As discussed *supra* ¶¶ 49-50, the 2023 Model Policies prohibit school staff from using students' affirming names and pronouns, unless a student's parent has requested it in writing. 2023 Model Policies, at 14 ("[School Division] personnel shall refer to a student by a name other than one in the student's official record, or by pronouns other than those appropriate to the sex appearing in the student's official record, only if an eligible student or a student's parent has instructed [School Division] in writing that such other name or other pronouns be used."). Even if a parent has requested that school personnel use a student's affirming name and pronoun, the 2023 Model Policies prohibit schools from compelling school staff to use the affirming name and pronoun if the staff member has a legally cognizable objection to doing so, without the policies defining the boundaries of such an objection. 2023 Model Policies, at 15 ("[School Division] shall not compel [School Division] personnel or other students to address or refer to students in any manner that would violate their constitutionally protected rights.").

Policies that allowed students or their parents to request that they be addressed by affirming names and pronouns that correspond to their gender identity, without any substantiating documentation, and that directed school staff to address those students accordingly.⁸² The York County School Board replaced that provision with language – taken from the 2023 Model Policies – that read: “A parent and/or legal guardian may request a name and/or pronoun change, for their child, that aligns with their gender identity. The Division shall not compel school personnel or other students to address or refer to students in any manner that would violate their constitutionally protected rights.”⁸³

70. To implement this policy change, York County Public Schools (“YCPS”) developed a form on which a parent was to indicate that they wanted school personnel to refer to their child by a name or pronouns different from those in the child’s official school record.

71. After YCPS amended its policy but before the first day of school, Plaintiff’s mother, Jill Doe, submitted YCPS’s required form to school administrators directing school personnel to refer to Plaintiff by her gender affirming name and pronouns, rather than the legal name in her official student record.

72. YCPS failed to process the request for several weeks. Jill Doe only learned that the request had not been processed when, several weeks into the school year, the vice principal of Plaintiff’s school called Jill Doe to interrogate her about the name and pronoun form she had submitted, questioning whether Jill Doe understood what she had signed. The vice principal also

⁸² 2021 Model Policies, at 13 (“School divisions should accept a student’s assertion of their gender identity without requiring any particular substantiating evidence, including diagnosis, treatment, or legal documents... When a student asserts that they have a name and/or pronoun affirming their gender identity, school staff should abide by the student’s wishes as to how to address the student.”); Amendments to Policy Regarding Student Records by York Cty. Sch. Bd. (Aug. 24, 2023), available at [https://go.boarddocs.com/vsba/ycsd/Board.nsf/files/CUSM6F592CE2/\\$file/Redline%20Revisions%20to%20Policy%20JO.pdf](https://go.boarddocs.com/vsba/ycsd/Board.nsf/files/CUSM6F592CE2/$file/Redline%20Revisions%20to%20Policy%20JO.pdf), and attached as Exhibit 10.

⁸³ Amendments to Policy Regarding Student Records by York Cty. Sch. Bd., *supra*.

told Jill Doe that the policy required her to come to school for a meeting about the request. Jill Doe expressed frustration at this additional requirement and ultimately did not attend a meeting, but the school processed her request anyway.

73. Even after YCPS processed Jill Doe's request, class rosters and other school documents continue to only reflect Plaintiff's legal name and do not indicate her affirming name, even as an alias. Plaintiff's legal name is a masculine name typically associated with men. This discloses Plaintiff's transgender identity to all of her teachers.

74. At the beginning of the school year, Plaintiff or other supportive school personnel had to request that teachers who did not already know Plaintiff use her affirming name and pronouns. Nearly all of Plaintiff's teachers use her affirming name and pronouns in accordance with Plaintiff's and Jill Doe's request.

75. However, were Plaintiff to have a substitute teacher who did not know her, that teacher would call out Plaintiff's legal name when calling the role, disclosing her transgender identity to her classmates.

76. Certain applications used by YCPS, including Canvas and the school system's parent portal, reflect Plaintiff's affirming name as an alias. However, Jill Doe and Plaintiff do not know what other action, if any, was taken by YCPS in response to Jill Doe's request, or whether any changes in Plaintiff's official records were made as a result of the request.

77. Upon information and belief, Plaintiff's school did not take any action prior to the beginning of the school year to determine whether any of Plaintiff's assigned teachers would refuse to use her name and pronouns consistent with her gender identity, or whether Plaintiff would be subjected to any differential or discriminatory treatment by any of her teachers on the basis of her gender identity.

78. When Plaintiff began the 2023-2024 school year, one of her teachers refused to use Plaintiff's affirming name in accordance with Jill Doe's request.

79. Instead, that teacher called Plaintiff only by her last name. The teacher did not address any other student in the class using their last name. Instead, the teacher referred to every other student by their first name.

80. Plaintiff does not recall that teacher ever referring to her by any pronouns, but only by her last name. In contrast, the teacher regularly used third-person pronouns for other students.

81. Plaintiff noticed this discrepancy early in the school year, but it was several weeks before Plaintiff could work up the courage to confront the teacher about it.

82. During class one day, Plaintiff asked the teacher why she would not call Plaintiff by her first name. Plaintiff explicitly and directly asked the teacher not to refer to her by her last name, but instead to use her affirming first name.

83. The teacher refused and – mirroring the language of the 2023 Model Policies – told Plaintiff that it was the teacher's constitutional right to refuse to address students in a manner she personally found objectionable.

84. Understanding that her teacher objected to her very existence, would refuse to treat her with respect in the classroom, and would continue to single her out from other students in the way she was addressed, Plaintiff was extremely upset and was unable to remain in the classroom. When she told the teacher that she intended to leave the class, the teacher threatened to write her up if she left.

85. Because Plaintiff's individualized education plan allows her to access her special education teacher's classroom as needed, Plaintiff ignored the teacher's threat and immediately went to her special education teacher's classroom.

86. This interaction caused Plaintiff anxiety that included mental distress and physical symptoms, including shakiness.

87. Jill Doe informed the school's principal of the teacher's actions and their impact on Plaintiff. The principal directed Plaintiff's counselor to work with Plaintiff to rearrange her schedule and remove her from this specific teacher's class. The school did not offer Plaintiff any other solution or resolution to this situation.

88. The principal told Jill Doe that she was unable to discipline the teacher or force the teacher to use Plaintiff's affirming name, pointing to YCPS's student records policy that had been updated to conform with the 2023 Model Policies regarding name and pronoun usage.

89. The principal did not offer to direct the teacher to refer to everyone in the class by their last name so as not to single Plaintiff out through differential treatment.

90. Even though it was a month into the school year, Plaintiff had no other option than to rearrange her schedule, impacting several of her classes.

91. On or about October 3, 2023, Plaintiff's schedule was updated. In the interim, Plaintiff Doe missed over a week of a core curriculum class, spending that period in her special education teacher's classroom.

92. Plaintiff worries that her future teachers and substitute teachers could similarly refuse to properly address her by her affirming name, and that she would not have any recourse to ensure she was treated the same as other students.

93. Plaintiff also worries that she could be forced to rearrange her schedule again, based on an individual teacher's decision to not use her gender affirming name or pronouns. This is compounded by her concern that, in future situations, it may not be possible to rearrange her schedule to both provide all necessary classes and avoid placement with a teacher who refuses to use her affirming name.

94. When Plaintiff is singled out for different treatment by an authority figure such as a teacher, solely on the basis of her identity as a transgender person, she feels anxious, uncomfortable, and unhappy, and this differential treatment exacerbates her gender dysphoria.

95. Plaintiff does not want people to associate her with her former identity, and she finds it extremely upsetting to be treated differently than other students because she is transgender.

96. Plaintiff does not want to respond to a name other than her affirming name. But she worries that, in a situation where a teacher refuses to use her affirming name, she would have to respond, or she could be marked as absent or face discipline.

97. The 2023 Model Policies, and the practices that result, have created negative feelings about school for Plaintiff. Plaintiff now hates being at school because she feels unsafe there, and she has no recourse when she experiences discrimination. Plaintiff finds the emotional toll of dealing with the issues that negatively impact her as a transgender student to be exhausting. The 2023 Model Policies have led Plaintiff to feel hopeless that her school environment will improve anytime soon.

98. The 2023 Model Policies ignore the clear, conclusive, and convincing evidence regarding the policies that are necessary to support transgender students' access to education, in violation of the authorizing statute. VDOE's failure to comply with the authorizing statute has

resulted in harm to the Plaintiff. By issuing a guidance document that exceeds the agency’s statutory authority and that has negatively impacted transgender students, including Plaintiff, VDOE’s action is subject to vacatur by this court.

COUNT I:

Request for Judicial Relief Under Va. Code §§ 2.2-4027 and -4029

99. Plaintiff realleges all paragraphs set forth above and incorporates them herein by reference.

100. This Court may suspend or set aside an agency action, including the issuance of a guidance document, if that action is not in compliance with the agency’s statutory authority or “the objectives for which [the guidance] may be made.” *See* Va. Code Ann. § 2.2-4027.

101. The 2023 Model Policies do not comply with the mandate of the authorizing statute. Virginia Code § 22.1-23.3 directs the VDOE to promulgate “model policies concerning the treatment of transgender students in public elementary and secondary schools that address common issues regarding transgender students *in accordance with evidence-based best practices...*” (emphasis added). The 2023 Model Policies issued by the VDOE are not evidence-based.

102. Furthermore, the model policies must include “information, guidance, procedures, and standards” relating to various topics, such as the “[m]aintenance of a safe and supportive learning environment free from discrimination and harassment for all students” and “[c]ompliance with applicable nondiscrimination law.”⁸⁴ The 2023 Model Policies fail to help schools create a safe and supportive environment for transgender students or guide school

⁸⁴ Va. Code Ann. § 22.1-23.3(A), (A)(2), and (A)(1).

districts towards compliance with state and federal non-discrimination laws, because they establish default rules that harm and discriminate against transgender students.

103. The 2023 Model Policies explicitly include guidance regarding transgender students' participation in athletics, which directly violates the authorizing statute.⁸⁵

104. The 2023 Model Policies exceed their statutory authority in focusing on the rights of parents, as opposed to the statutory direction to provide guidance that would foster a safe and inclusive learning environment for transgender students.

105. The 2023 Model Policies conflict with the Virginia Human Rights Act's prohibition of discrimination on the basis of gender identity in public accommodations.⁸⁶

106. The 2023 Model Policies conflict with the Virginia Constitution's prohibition of discrimination on the basis of sex.⁸⁷

107. The 2023 Model Policies direct schools to implement policies that will result in discrimination that is unlawful under federal law, including the U.S. Constitution, Title IX of the Education Amendments of 1972, and the Americans With Disabilities Act.

108. An actual controversy exists between Plaintiff and Defendant in that Plaintiff has been harmed by the Defendant's adoption of the 2023 Model Policies. Plaintiff has suffered emotional, psychological, and educational harm because of VDOE's issuance of the 2023 Model Policies, which is a clear and tangible injury that is different from any impact felt by the general public.

109. Plaintiff's rights can be adjudicated through a decision by this Court to set aside the 2023 Model Policies. A decision by the Court to suspend or set aside the 2023 Model

⁸⁵ *Id.* § 22.1-23.3(A)(8).

⁸⁶ *Id.* § 2.2-3904(B).

⁸⁷ VA CONST., art. I, § 11 (“[T]he right to be free from any governmental discrimination upon the basis of religious conviction, race, color, *sex*, or national origin shall not be abridged[.]”) (emphasis added).

Policies would in effect also set aside VDOE’s recission of the 2021 Model Policies, such that the 2021 Model Policies would once again become the operative guidance document, and school districts would be required to adopt policies consistent with them.

COUNT II:

Declaratory Judgment Under Va. Code § 8.01-184

110. Plaintiffs reallege all paragraphs set forth above and incorporate them herein by reference.

111. Under Virginia Code § 8.01-184, declaratory judgement is available to “make binding adjudications of right” in cases where there are “[c]ontroversies involving the interpretation of ... statutes, municipal ordinances and other governmental regulations.”

112. The 2023 Model Policies issued by the VDOE do not comply with the authorizing statute and have resulted in harm to the Plaintiff. Therefore, an actual controversy exists that may be adjudicated by this Court’s interpretation of VDOE’s 2023 Model Policies in light of Virginia Code § 22.1-23.3.


PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court award the following relief:

- A. Pursuant to Virginia Code § 2.2-4029, set aside the 2023 Model Policies;
- B. Pursuant to Virginia Code § 8.01-184, enter a Declaratory Judgment that:
 - a. The VDOE exceeded the scope of its statutory authority under Virginia Code § 22.1-23.3 by issuing the 2023 Model Policies;
 - b. The 2023 Model Policies are contrary to law;

- c. Local school divisions are not required to adopt the 2023 Model Policies or policies consistent with them nor to comply with Superintendent's Memo 139-23 dated August 25, 2023; and
 - d. Once the 2023 Model Policies are set aside, the 2021 Model Policies remain the operative guidance document with which school districts must conform their policies;
- C. Pursuant to Virginia Code § 8.01-186, enter any orders necessary to effectuate declaratory judgment;
- D. Pursuant to Virginia Code §§ 8.01-190 and 2.2-4030, award Plaintiff reasonable attorneys' fees, costs, and expenses of this action;
- E. Retain jurisdiction over this matter for the purpose of enforcing this Court's orders; and
- F. Grant other such relief as this Court deems equitable and just under the circumstances.

**RESPECTFULLY SUBMITTED,
JANE DOE by JILL DOE**

By Counsel: 
Geri M. Greenspan, VSB #76786
Wyatt Rolla, VSB #85625
AMERICAN CIVIL LIBERTIES UNION
FOUNDATION OF VIRGINIA
P.O. Box 26464
Richmond, VA 23261
Phone: (804) 491-8584
Fax: (804) 538-5707
ggreenspan@acluva.org
wrolla@acluva.org

Andrew J. Ewalt* (DC Bar No. 4934330)
Meghan E.F. Rissmiller* (DC Bar No. 992487)
Jennifer B. Loeb* (DC Bar No. 996094)
Ross C. Svenson* (DC Bar No. 1779297)
FRESHFIELDS BRUCKHAUS
DERINGER US LLP

700 13th Street NW, 10th Floor

Washington, DC 20005

Telephone: (202) 777-4500

Facsimile: (202) 777-4555

andrew.ewalt@freshfields.com

meghan.rissmiller@freshfields.com

jennifer.loeb@freshfields.com

ross.svenson@freshfields.com

** Application for admission pro hac vice forthcoming*

VERIFICATION

All of the factual statements in this Verified Complaint are true to the best of my knowledge. I understand that a false statement in this Verified Complaint may subject me to penalty of perjury.



aka Jill Doe