

VIRGINIA: IN THE CIRCUIT COURT FOR THE COUNTY OF HANOVER

LILY LOE, by LUCY and LARRY LOE)
)
Plaintiff,)
)
v.)
VIRGINIA DEPARTMENT OF EDUCATION,)
)
Defendant.)

Case No. _____

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 (“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 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 Lily Loe¹ is a resident of Hanover County and attends a Hanover County Public Schools middle school. Plaintiff sues by her parents, Lucy and Larry Loe, as Next Friends. 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 Friends proceed by the pseudonyms "Lily Loe," "Lucy Loe," and "Larry Loe," pursuant to Va. Code Ann. § 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." Am. Psych. Ass'n, *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. Committee members were also invited to provide their own additional resources for fellow members to consider.²²

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, 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 *Id.* 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 7.

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 8.

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 9.

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”] (emphasis in original), <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, the 2023 Model Policies dictate that athletic participation “shall be determined by sex rather than gender or gender identity.”⁵⁴ However, research demonstrates that “[w]hile trans-inclusive policies have no negative impact for cisgender athletes, trans-exclusive bans harm transgender youth and young adults.”⁵⁵

48. Playing sports provides young people with opportunities to stay active, build confidence, work in teams, and otherwise reap social and psychological benefits.⁵⁶ Research indicates that transgender students who participate in sports have higher grades and better mental health outcomes than those who do not.⁵⁷

49. However, transgender students may be discouraged from participating in sports due to discrimination and safety concerns.⁵⁸ Excluding transgender and nonbinary students from

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 *Id.* at 16. As discussed below, the inclusion of any policy related to athletics exceeds the scope of VDOE’s authority granted by Virginia Code § 22.1-23.3.

⁵⁵ Ctr. for Am. Progress, *Fair Play: The Importance of Sports Participation for Transgender Youth* (2021), <https://www.americanprogress.org/article/fair-play/>.

⁵⁶ President’s Council on Sports, Fitness & Nutrition, *Benefits of Youth Sports* 1-2 (2020), https://health.gov/sites/default/files/2020-09/YSS_Report_OnePager_2020-08-31_web.pdf.

⁵⁷ The Trevor Project, *The Well-Being of LGBTQ Youth Athletes* 1 (2020), <https://www.thetrevorproject.org/wp-content/uploads/2020/08/LGBTQ-Youth-Sports-and-Well-Being-Research-Brief.pdf>; Am. Coll. Health Ass’n, National College Health Assessment, (2019), https://www.acha.org/documents/ncha/NCHA-III_Fall_2019_Reference_Group_Executive_Summary_updated.pdf; Am. Coll. Health Ass’n, National College Health Assessment (2020), https://www.acha.org/documents/ncha/NCHA-III_SPRING-2020_REFERENCE_GROUP_EXECUTIVE_SUMMARY_updated.pdf.

⁵⁸ The Trevor Project, *supra* note 51, at 2; see also Human Rights Campaign, *Play to Win: Improving the Lives of LGBTQ Youth in Sports* 7-9, 18 (2018), available at <https://assets2.hrc.org/files/assets/resources/PlayToWin-FINAL.pdf>.

athletic opportunities deprives already vulnerable students of positive experiences that are proven to have life-long benefits.⁵⁹

50. In another example, research establishes 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.⁶⁰ Because 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.⁶¹

51. 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."⁶²

52. 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

⁵⁹ Ctr. for Am. Progress, *supra* note 49. In addition, barring transgender students from competing in athletics in accordance with their gender identity is out of step with trans-inclusive guidelines implemented by the governing bodies of many amateur, collegiate, and even professional sports, including USA Gymnastics, U.S. Soccer, the National Women's Hockey League, the National Collegiate Athletic Association, World Athletics, and the International Olympic Committee. *Id.*

⁶⁰ See 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.").

⁶¹ 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).

⁶² 2023 Model Policies, at 14.

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.⁶³

53. 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.”⁶⁴

54. 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.”⁶⁵

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

56. 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.⁶⁶ This policy recognizes that failing to include a student's “name and gender consistent with the gender identity may pose risks of inadvertently disclosing the student's gender identity as well as cause potential emotional trauma for a transgender student.”⁶⁷

57. 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

⁶³ *Id.*, at 14.

⁶⁴ *Id.*, at 15.

⁶⁵ *Id.*, at 5.

⁶⁶ 2021 Model Policies, at 16.

⁶⁷ *Id.* at 14.

correspond with the student’s gender identity.⁶⁸ 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.

58. 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.”⁶⁹ 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.⁷⁰

59. 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.⁷¹

The 2023 Model Policies Exceed the Scope of the Authorizing Statute

60. 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

⁶⁸ 2023 Model Policies, at 14.

⁶⁹ 2021 Model Policies, at 11.

⁷⁰ *Id.* at 14-15.

⁷¹ 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.”).

upbringing, education, and control of their children.”⁷² They instruct schools to draft policies “to safeguard parents’ rights with respect to their child, and to facilitate the exercise of those rights.”⁷³ In contrast, the authorizing statute makes no reference to parents’ rights.

61. Similarly, Virginia Code § 22.1-23.3 specifies that the VDOE should not address transgender students’ participation in athletics in the Model Policies.⁷⁴ 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.”⁷⁵

62. Notwithstanding the 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 “sex,” which is defined in the 2023 Model Policies as “biological sex.”⁷⁶

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

63. The authorizing statute requires VDOE to promulgate guidance for schools on how to comply with “applicable nondiscrimination laws” in their treatment of transgender students.⁷⁷ The 2021 Model Policies met this requirement by, for example, recognizing that

⁷² *Id.* at 5.

⁷³ *Id.* at 2.

⁷⁴ 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.”).

⁷⁵ *See, e.g.*, 2021 Model Policies, at 18.

⁷⁶ 2023 Model Policies, at 12 (“The word “sex” means biological sex.”); 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.”).

⁷⁷ Va. Code Ann. § 22.1-23.3(A)(1).

LGBTQ+ students are a protected class under anti-bullying, harassment, and discrimination rules.⁷⁸

64. 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.”⁷⁹

65. 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.”⁸⁰ In other words, the 2023 Model Policies 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.

⁷⁸ 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).

⁷⁹ See, e.g., 2023 Model Policies, at 12.

⁸⁰ *Id.* at 5, 16.

66. 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.”⁸¹ 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.⁸²

67. 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.⁸³

68. Similarly, categorical bans on transgender athletes’ participation in sports teams that align with their gender identity, such as the one included in the 2023 Model Policies, have been found to violate federal law.⁸⁴

⁸¹ See, e.g., 2021 Model Policies, at 17-18.

⁸² *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.”).

⁸³ See, e.g., *Grimm*, 972 F.3d at 586 (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), *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 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).

⁸⁴ See *Hecox*, 79 F.4th 1009 (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 Protection Clause

69. 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."⁸⁵

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

70. Plaintiff is a transgender girl and has a gender dysphoria diagnosis. Plaintiff transitioned in 2020 and has been receiving gender-affirming care since then.

71. Plaintiff has changed her legal name, and her birth certificate reflects that her gender is female. Her official school record has been amended to reflect these changes.

72. In the summer of 2023, Plaintiff participated in six weeks of private lessons in her favorite sport and attended a week-long camp.

73. Plaintiff was excited to try out for her middle school team in that sport at the start of the 2023-2024 school year, together with her best friend and her neighbor.

74. On or about August 29 and August 31, 2023, Plaintiff tried out for her middle school team.

75. On August 31, 2023, Lucy and Larry Loe learned through Schoology, an internet application allowing parents to access HCPS information regarding their enrolled children, that Plaintiff had made the team.

claim); *see Horne* No. CV-23-00185-TUC-JGZ, 2023 WL 4661831, at *1 (D. Ariz. July 20, 2023) (granting a preliminary injunction against Arizona's categorical ban on transgender athletes' participation on teams aligned with their gender identity, based on likelihood of success on merits under the Equal Protection Clause and Title IX claims).

⁸⁵ *Grimm*, 972 F.3d at 626.

76. On September 5, 2023, Plaintiff's parents received a letter from the Chair of the Hanover County School Board.⁸⁶ The letter stated it had "come to the School Board's attention" that Plaintiff had been selected to participate on the girls' sports team but was assigned a male biological sex at birth. Citing the 2023 Model Policies, the School Board informed Plaintiff's parents that it intended to "work to determine the best interest of all participants on the team."⁸⁷

77. The letter requested medical documentation and verification that Plaintiff consistently identified as female to "consider [her] participation on the girls' [sports] team." The letter indicated that the School Board would consider Plaintiff's participation on the team in closed session at its next meeting.

78. The letter also notified Lucy and Larry Loe that Plaintiff was not permitted to participate in practices or matches while the School Board considered its decision.⁸⁸

79. After receiving the letter, Plaintiff's mother rushed to intercept Plaintiff before she arrived at after-school practice for the team, terrified that her daughter would be turned away in front of her peers, because this would be humiliating for her and would have the effect of "outing" Plaintiff as transgender.

80. When Lucy and Larry Loe picked up Plaintiff and told her that she was not allowed to play on the team, she was very upset and cried. Plaintiff initially had hope that her parents could rectify the situation and she would ultimately be able to play.

81. On September 11, 2023, Lucy and Larry Loe provided to the Hanover County Attorney's Office the documentation that the HCPS School Board had requested in its September

⁸⁶ Letter from Robert J. May, Chairman, Hanover Cty. Sch. Bd., to Plaintiff's Parents (Sept. 5, 2023), attached as Exhibit 10.

⁸⁷ *Id.* As of the date of the letter, HCPS's athletics policy did not reflect the language of the 2023 Model Policies. Instead, HCPS Policy 7-4.1 deferred to the Henrico/Hanover Middle School Athletic Council (MSAC) for rules and regulations concerning middle school athletics. HCPS had not adopted any other policy permitting the school board to determine the appropriate gendered sports team for a student.

⁸⁸ *Id.*

5, 2023, letter. With that documentation, they also expressed to HCPS’s counsel that they did not believe that the School Board had the authority to bar Plaintiff from participating on the team under its current policies, but they were providing the requested documentation because their priority was to ensure that Plaintiff could participate.

82. The documentation provided to the School Board included records reflecting the following aspects of Plaintiff’s medical and social transition:

- a. Plaintiff was first evaluated by a medical professional for gender identity issues in 2020. She has been receiving clinically appropriate treatment consistent with her gender identity and gender expression as a girl since then.
- b. Plaintiff is on puberty blockers and never experienced endogenous puberty.
- c. Plaintiff has legally changed her name and amended her birth certificate to reflect both the name change and a sex of female.

83. While awaiting the School Board’s scheduled vote on her athletic participation, Plaintiff felt anxious and experienced consistent worry about the looming decision. Plaintiff consistently asked her parents what was happening and when they would have an answer about her eligibility to participate on the team.

84. On September 12, 2023, the School Board discussed Plaintiff’s athletic participation in a closed session. Plaintiff’s parents were told by HCPS counsel that they were not permitted to attend the closed meeting, despite requesting in writing to be present for the “presentation of evidence” concerning Plaintiff as permitted by Virginia Code § 2.2-3711(A)(2).

85. The School Board’s agenda for the meeting identified the matter of Plaintiff’s participation on the sports team as: “Section 2-2-3711(A)(2) Discussion Regarding Student Participation in Athletics, Section 2.2-3711(A)(8) *Discussion Regarding Legal Matter Related to*

VDOE Model Policy on Ensuring Privacy, Dignity and Respect for All Students and Parents in Virginia's Public Schools.”⁸⁹

86. In an open meeting immediately after the closed session, the School Board voted unanimously to exclude Plaintiff from the girls’ team.

87. On September 14, 2023, via counsel, the Chairman of the School Board provided Plaintiff’s parents a resolution letter indicating that “the School Board voted unanimously against permitting your student to participate on the middle school girls’ [sports] team in effort to ensure fairness in competition for all participants.”⁹⁰

88. As a result of this decision, Plaintiff was very frustrated and upset that she was not able to play on the team with her friends and classmates or proudly wear the team’s uniform together with them at school. Plaintiff was angry that she was being singled out and excluded. Plaintiff also felt embarrassed that her participation in athletics with her peers had been the focus of so much attention by powerful adults responsible for the entirety of Hanover County Public Schools.

89. After they received the School Board’s letter dated September 5, 2023, but before the School Board had made a final decision on Plaintiff’s eligibility to participate on the team, Lucy and Larry Loe purchased a team jersey for Plaintiff. When they found out after the School Board’s vote that Plaintiff would not be allowed to participate on the team, Larry Loe picked up the jersey from the principal and hid it from Plaintiff to prevent additional emotional distress.

90. Plaintiff was forced to seek opportunities for athletic participation outside of Hanover County Public Schools, at significantly greater expense and logistical burden than was

⁸⁹ Hanover Cty. Sch. Bd., Agenda Item Details of September 12, 2023 Meeting (Sept. 12, 2023) (emphasis added), available at <https://go.boarddocs.com/vsba/hcpsva/Board.nsf/goto?open&id=CRYL8N55530E>.

⁹⁰ Letter from Robert J. May, Chairman, Hanover Cty. Sch. Bd., to Plaintiff’s Parents (Sept. 14, 2023), attached as Exhibit 11.

required for participation on the school team. However, Lucy and Larry Loe were able to find a private competitive program in the same sport, affiliated with the national governing body for that sport, in which Plaintiff will be able to participate in accordance with her gender identity.

91. Nonetheless, Plaintiff still desires to play on her school team with her peers and friends.

92. On November 14, 2023, the Hanover County School Board voted to amend its policy regarding participation in extracurricular activities by inserting text from the 2023 Model Policies relevant to athletics, specifically that participation in athletics “will be determined by biological sex rather than gender or gender identity.”⁹¹

93. The School Board explained that the policy revision was “the result of the model policies recently issued” by the VDOE.⁹²

94. As a result of this policy change, Plaintiff will have no future opportunity to participate in any school-based athletic program in a manner that aligns with her gender identity.

95. On November 14, 2023, the Hanover County School Board also voted to amend its policy regarding restroom and locker room access by inserting “biological” before the word sex, to mirror the definition of sex under the 2023 Model Policies.⁹³

96. The School Board explained that the policy revision was “the result of the model policies recently issued” by the VDOE.⁹⁴

⁹¹ See Hanover Cty. Sch. Bd., Meeting Minutes from Nov. 14, 2023 Meeting at 4-5 (Nov. 14, 2023) (unanimously approving Policy 7-4.1) [hereinafter “November 14 School Board Meeting”], attached as Exhibit 12; *see also* Hanover Cty. Sch. Bd., Proposed Revisions: 7-4.1 Extracurricular Activities Policy, attached as Exhibit 13.

⁹² Hanover Cty. Sch. Bd., Agenda Item Details of November 14, 2023 Meeting, Approval of Proposed Policy Revisions 1-2 (Nov. 14, 2023) [hereinafter November Action Agenda], attached as Exhibit 14.

⁹³ Hanover Cty. Sch. Bd., Proposed Revisions: 7-1.7 Restroom and Locker Room Policy, attached as Exhibit 15; 2023 Model Policies, at 12.

⁹⁴ November Action Agenda, at 1.

97. After the policy change, Lucy and Larry Loe asked their counsel to confirm Plaintiff's ability to access the girls' locker room at her school. In response, on December 1, 2023, Hanover County Public Schools informed Lucy and Larry Loe, through counsel, that Plaintiff would no longer be permitted to use the girls' locker room, effective immediately.

98. HCPS's counsel stated that Plaintiff could request an accommodation to use the locker room under new HCPS Policy 7-1.7. Plaintiffs' parents did not request any accommodation because they did not believe it would be granted, they did not want to submit additional invasive information about Plaintiff, and they did not want to subject Plaintiff to another public vote by the School Board. As a result, Plaintiff does not use any locker room at school.

99. The general atmosphere within the school community has led Plaintiff's parents to take extra care to monitor Plaintiff's social interactions for bullying based on her transgender identity, and to counsel Plaintiff extensively to use caution in choosing her friends.

100. Plaintiff's parents are concerned that Plaintiff is suffering emotional and psychological trauma because of the discrimination she has experienced.

101. As Plaintiff's experiences demonstrate, 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 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

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

103. 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.

104. 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.

105. 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.”⁹⁵ The 2023 Model Policies fail to help schools create a safe and supportive environment for transgender students or guide school districts towards compliance with state and federal non-discrimination laws, because they establish default rules that harm and discriminate against transgender students.

106. The 2023 Model Policies explicitly include guidance regarding transgender students’ participation in athletics, which directly violates the authorizing statute.⁹⁶

⁹⁵ Va. Code Ann. § 22.1-23.3(A), (A)(2), and (A)(1).

⁹⁶ *See* Va. Code Ann. § 22.1-23.3(A)(8).

107. 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.

108. The 2023 Model Policies conflict with the Virginia Human Rights Act's prohibition of discrimination on the basis of gender identity in public accommodations.⁹⁷

109. The 2023 Model Policies conflict with the Virginia Constitution's prohibition of discrimination on the basis of sex.⁹⁸

110. 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.

111. 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.

112. 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 Policies would in effect also set aside VDOE's rescission 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.

⁹⁷ Va. Code Ann. § 2.2-3904(B).

⁹⁸ 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).

COUNT II:

Declaratory Judgment Under Va. Code § 8.01-184

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

114. 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.”

115. 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,
LILY LOE by LUCY and LARRY LOE**

By Counsel: _____
Wyatt Rolla, VSB #85625
Geri M. Greenspan, VSB #76786
AMERICAN CIVIL LIBERTIES UNION
FOUNDATION OF VIRGINIA
P.O. Box 26464
Richmond, VA 23261
Phone: (804) 491-8584
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.

[REDACTED]
[REDACTED] aka Lucy Loe

[REDACTED]
[REDACTED] aka Larry Loe