

VIRGINIA: IN THE CIRCUIT COURT OF ROCKINGHAM COUNTY

D [REDACTED] F [REDACTED],
K [REDACTED] M [REDACTED]
T [REDACTED] and I [REDACTED] N [REDACTED], and
J [REDACTED] and N [REDACTED] S [REDACTED]

Plaintiffs,

v.

THE SCHOOL BOARD OF THE CITY
OF HARRISONBURG, VIRGINIA, and

Serve:
Nick Swayne
Chair, The School Board of the City
of Harrisonburg, Virginia
1 Court Square
Harrisonburg, Virginia 22801

Deb Fitzgerald
Vice Chair, The School Board of the
City of Harrisonburg, Virginia
1 Court Square
Harrisonburg, Virginia 22801

Obie Hill
The School Board of the City of
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The School Board of the City of
Harrisonburg, Virginia
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The School Board of the City of
Harrisonburg, Virginia
1 Court Square
Harrisonburg, Virginia 22801

FILED IN THE CLERKS OFFICE
ROCKINGHAM COUNTY, VA

JUN 01 2022
 DEPUTY CLERK

CASE NO.: _____

Kaylene Seigle
The School Board of the City of
Harrisonburg, Virginia
1 Court Square
Harrisonburg, Virginia 22801

MICHAEL G. RICHARDS,
Superintendent, in his official capacity,

Serve:
Michael G. Richards
1 Court Square
Harrisonburg, Virginia 22801

Defendants.

**COMPLAINT FOR DECLARATORY, INJUNCTIVE,
AND ADDITIONAL RELIEF**

INTRODUCTION

1. Public schools should never hide information from or lie to parents about a child's mental health. And schools should never compel teachers to perpetrate such a deception. Yet Harrisonburg City Public Schools ("HCPS") has done just that—implementing a policy and practice ("Policy") on the treatment of transgender students that forces teachers on pain of discipline to use any pronouns or names requested by a student, while actively hiding information about that request from the child's parents.

2. HCPS adopted the Policy following the issuance by the Virginia Department of Education ("VDOE") of a model policy on the treatment of transgender students and its mandate that all Virginia school divisions adopt similar policies for the 2021–2022 school year.

3. Following that announcement, HCPS added "gender identity" to its Division Nondiscrimination Policy and issued specific guidance to teachers and the public

specifying the new requirements of the Policy—requirements that exceed anything mandated by VDOE.

4. Those requirements violate teachers' state-constitutional rights by compelling speech with which teachers strongly disagree—affirming HCPS's message about sex and gender by using pronouns that do not correspond to a student's biological sex—and simultaneously restricting their speech by forcing them to withhold medical information from parents.

5. The Policy also compels teachers to violate their religious convictions about gender and honesty.

6. And it violates parents' rights by interfering with their ability to direct the upbringing and education of their children contrary to state constitutional and statutory protections.

7. The freedom of speech is “among the great bulwarks of liberty, and can never be restrained except by despotic governments.” Va. Const. art. I, § 12. Similarly, “all men are equally entitled to the free exercise of religion, according to the dictates of conscience.” *Id.* § 16. These freedoms are the foundation of our society, the “fixed star in our constitutional constellation”—“no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein.” *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943).

8. The United States Supreme Court has repeatedly recognized parents' rights and responsibilities to direct the upbringing, education, and care of their children as “perhaps the oldest of the fundamental liberty interests.” *Troxel v. Granville*, 530 U.S. 57, 65 (2000) (plurality op.) (collecting cases). The Virginia Supreme Court agrees. See *L.F. v. Breit*, 736 S.E.2d 711, 721 (Va. 2013); *Wyatt v. McDermott*, 725 S.E.2d 555, 558 (Va. 2012).

9. Plaintiffs D█████ F█████, K█████ M█████ L█████ and T█████ N█████, and N█████ and J█████ S█████ are HCPS teachers and parents who object to HCPS's policy on free-speech, religious-freedom, and parental-rights grounds.

10. Plaintiffs deeply care about their students and children. They see the growing number of children struggling with gender dysphoria and want those children to experience love and support.

11. But like many, Plaintiffs recognize that a policy of immediate social transition and unquestioning affirmation without parental involvement for every case of gender dysphoria in minors is harmful, not to mention contrary to science. Each child's situation is unique and warrants loving and tailored attention—attention that is best determined not by school officials, but by parents.

12. Plaintiffs are not alone in their convictions. Gender experts advocate for parental involvement when children struggle with their gender identity. These experts warn against blind affirmation by trusted adults like teachers that could push children towards social transition. They confirm the need for parental and psychotherapeutic involvement in such cases, which schools cannot provide alone. They explain that social transition is a medical intervention with long-term consequences and a determinative impact on children's experience with gender dysphoria. Forcing children to live a double life—being one person at school and a different person at home—endangers their mental health by cutting parents out of key medical decisions.

13. HCPS's new Policy flouts these warnings. And it violates Plaintiffs' state-constitutional and state-statutory rights in the process. Plaintiffs have personal and religious convictions about gender, honesty, and parenting that are directly infringed by HCPS's mandate that they speak (or hide information) in violation of their conscience.

14. For this reason, Plaintiffs bring this civil-rights lawsuit, seeking injunctive relief under the Virginia State Constitution, along with the Commonwealth's statutes

and common law, to stop HCPS from continuing to violate their freedoms and harming children in the process.

PLAINTIFFS

15. Plaintiff D [REDACTED] F [REDACTED] is an HCPS employee. She is a special-education and English teacher at Skyline Middle School, a school in the HCPS Division. Ms. F [REDACTED] is a Rockingham County resident and a United States citizen.

16. Plaintiff K [REDACTED] M [REDACTED] is an HCPS employee. She is a reading specialist at Spotswood Elementary School, a school in the HCPS Division. Ms. M [REDACTED] is an Augusta County resident and a United States citizen.

17. Plaintiff L [REDACTED] N [REDACTED] is an HCPS employee. She is an English-as-a-second-language (“ESL”) teacher at Harrisonburg High School in the HCPS Division.

18. L [REDACTED] N [REDACTED] and her husband, Plaintiff T [REDACTED] N [REDACTED], are also parents of children in HCPS schools. They have three children currently enrolled in HCPS schools—one at Skyline Middle School, and two at Smithland Elementary School. As of the time of this Complaint, the N [REDACTED]s’ children are in the sixth, fourth, and second grades. L [REDACTED] and T [REDACTED] N [REDACTED] and their children, are Harrisonburg residents and United States citizens.

19. Plaintiffs J [REDACTED] and N [REDACTED] S [REDACTED] are parents of children in HCPS schools. They have three boys currently enrolled in HCPS schools—all at Bluestone Elementary School. As of the time of this Complaint, the S [REDACTED]s’ children are in fourth and second grades. J [REDACTED] and N [REDACTED] S [REDACTED], and their children, are Harrisonburg residents and United States citizens.

DEFENDANTS

20. Defendant Harrisonburg City School Board (the “School Board” or “Board”) is the public corporate body that governs HCPS. *See* Va. Code § 22.1-28.

21. The School Board derives its authority from the Commonwealth of Virginia and acts under the authority of the Commonwealth of Virginia.

22. The School Board has final policymaking and decisionmaking authority for rules, regulations, and decisions that govern the HCPS Division, including the Policy challenged in this lawsuit.

23. The School Board exercised its policymaking authority by adopting the Policy challenged herein and implementing it.

24. The School Board has acquiesced in, sanctioned, and supported, and continues to acquiesce in, sanction, and support, the actions of Defendant Michael G. Richards and the Division's other agents, officers, and employees in adopting, implementing, and enforcing the Policy.

25. As superintendent, Defendant Michael G. Richards is the chief executive officer of Harrisonburg City Public Schools. At all times relevant to this Complaint, Richards has been the superintendent of HCPS.

26. Richards's duties include oversight and control of HCPS.

27. Richards's duties also include, among other things, authorizing, executing, enforcing, and implementing the School Board's policies and overseeing the operation and management of the Division, including adopting and implementing the Policy challenged in this lawsuit.

28. Plaintiffs are suing Richards in his official capacity only.¹

JURISDICTION AND VENUE

29. This Court has personal and subject-matter jurisdiction. Va. Code §§ 8.01-328.1, 17.1-513.

30. Venue is proper in this judicial circuit, because Plaintiffs filed this Complaint in the Circuit Court of the county where Defendants have their official office, *id.* § 8.01-261(2); where Defendants have their principal place of business and

¹ Where appropriate, Defendants are collectively referred to as "HCPS."

regularly conduct substantial business activity, *id.* § 8.01-262(1), (3); and wherein Plaintiffs' cause of action arose, *id.* § 8.01-262(4).

31. This Court has authority to issue the relief sought. *See id.* §§ 8.01-184 through -190 (empowering Circuit Courts to render declaratory judgment and award costs); *id.* § 8.01-620 (same, regarding injunctions); *id.* § 57-2.02(D) (same, regarding declaratory judgments, injunctions, and attorneys' fees in cases where a person's "religious exercise has been burdened by government"); *cf. Chaffinch v. Chesapeake & Potomac Tel. Co. of Va., Inc.*, 313 S.E.2d 376, 379 (Va. 1984) (holding that statutory remedy "d[id] not preempt common law remedies," including compensatory damages, against defendant that lacked sovereign immunity).

FACTUAL BACKGROUND

I. Teacher and Parent Plaintiffs

A. D [REDACTED] F [REDACTED]

32. Plaintiff D [REDACTED] F [REDACTED] is a special-education and English teacher at Skyline Middle School in HCPS where she is focused on reading and literacy.

33. Ms. F [REDACTED] has long had a heart for kids with special needs and difficult backgrounds. Her own children struggled with learning disabilities. When they were young, she decided to homeschool her children to provide the focused attention they needed. She saw them flourish in that environment and all three are now adults with successful lives and careers.

34. When Ms. F [REDACTED]'s children left for college, she felt a call to continue working with children and particularly those children with special educational needs.

35. Prior to having children, Ms. F [REDACTED] was a director of field operations with Youth Guidance in Long Island, New York—a mentorship program supported by around 60 churches that worked with troubled teens and their families. She had previously worked in a home for kids in New York that had inspired her passion and concern for kids with special needs and troubled backgrounds.

36. Ms. F [REDACTED] had volunteered, and was subsequently employed, as a Hospice Coordinator for two years before she applied for a teaching job in special education at Skyline Middle School.

37. Skyline Middle School hired Ms. F [REDACTED] and she has been there for the last eight years, teaching in special education with a focus on reading and literacy.

38. Ms. F [REDACTED] loves her work. She gives her students individualized attention and watches them gain critical literacy skills and grow into well-adjusted and successful students.

39. Ms. F [REDACTED]'s work has also brought her in contact with several students who question and struggle with their gender identity. She is aware of at least ten students in this situation in her school. She has worked with three of them personally—two previously, and one currently.

40. Issues surrounding gender identity are of particular importance to Ms. [REDACTED] [REDACTED]. She has walked closely alongside individuals who have struggled with their gender identity and who have ultimately aligned with their biological sex.

41. Through these experiences, Ms. F [REDACTED] has seen the importance of parental involvement when a child is struggling with such deeply personal and life-changing concerns as their gender identity. In particular, she has seen the importance of good psychotherapeutic assistance, coupled with parental involvement and support, to ensure that children struggling with gender dysphoria are able to process and work through all that they are feeling.

42. Ms. F [REDACTED] is convicted by her life experiences and religious beliefs that she cannot ever push a child towards a gender transition, and that she can never block children struggling with these issues from the benefit of their parents' involvement. Yet that is exactly what the new HCPS Policy would require her to do.

B. K [REDACTED] M [REDACTED]

43. Plaintiff K [REDACTED] M [REDACTED] currently teaches at Spotswood Elementary School in HCPS where she is a reading specialist for kindergarten through fifth grade.

44. Ms. M [REDACTED] has been teaching for over 30 years, approximately 20 of those in HCPS schools, and most of those with a focus on literacy.

45. Her position allows Ms. M [REDACTED] to work closely and individually with students who struggle to read—intervening to ensure those students don't experience further difficulties down the road. Some of her students struggle with learning disabilities that interfere with their ability to read and write at grade level, and some have individualized educational plans under the Individuals with Disabilities Education Act or plans under Section 504 of the Rehabilitation Act.

46. Ms. M [REDACTED] loves that through her work in HCPS schools she can guide children from a place of struggle and frustration to a place where they are confident readers, with literacy skills that will help them for their entire lives.

47. Ms. M [REDACTED] has specifically chosen to work in the public schools, rather than pursue employment in a private-school setting. She believes in the value of the public-school system and has seen so many children's lives changed by the education they receive there. Her own children went through public school and her husband also teaches in a nearby public-school division.

48. Through her years in HCPS, Ms. M [REDACTED] has felt (and continues to feel) a personal call to ensure that students in public schools receive the excellent education they deserve.

49. Ms. M [REDACTED] knows the HCPS Policy requirements and due to her religious beliefs and conscience cannot encourage children towards a gender transition, nor can she withhold information about children's gender confusion from their parents.

C. L [REDACTED] and T [REDACTED] N [REDACTED]

50. Plaintiff L [REDACTED] N [REDACTED] is an ESL teacher at Harrisonburg High School in HCPS where she has been teaching for the last 18 years.

51. Ms. N [REDACTED] became a teacher after being deeply affected by a year living in Asunción, Paraguay, and working with street children. The experience gave her a heart for children, particularly those coming from difficult backgrounds. Ms. N [REDACTED] decided to pursue a teaching degree so that she could make a positive difference in children's lives and has a particular desire to serve children in the ESL community.

52. Ms. N [REDACTED] cares deeply for her ESL students and considers it a real privilege to work with them as they adapt to the culture of and life in the United States. She is continually inspired by the hard work, faith, and perseverance of the ESL families with which she interacts in the face of the many hardships and challenges that often beset them.

53. Ms. N [REDACTED] loves that she is able to be a classroom teacher to ESL students and would not want to work in any other school division.

54. Ms. N [REDACTED] is aware of several children who struggle with gender-identity issues at Harrisonburg High School, one of whom is in Ms. N [REDACTED]'s class.

55. Ms. N [REDACTED] has been trained on HCPS's new Policy and its requirements for her as a teacher. But due to her religious and personal beliefs she cannot affirm a gender identity inconsistent with a student's biological sex. Nor can she withhold information about students' gender from their parents as HCPS's Policy requires.

56. Ms. N [REDACTED] and her husband, T [REDACTED] N [REDACTED], also have three children, all boys, in HCPS schools. One of their children is currently enrolled in the sixth grade at Skyline Middle School. The other two are currently in the fourth and second grades at Smithland Elementary School.

57. The N [REDACTED] believe that it is their duty and responsibility to act in the best interests of their children on every matter. That includes walking with their children through any medical or mental-health issues their children encounter in life.

58. The N [REDACTED] value the public-school system. For them, it is their only choice to educate their children. Private school is not a financially viable option and home-schooling is equally untenable for them.

59. But even if they had other schooling choices, the N [REDACTED] would send their children to HCPS schools. They value the range of people and opinions, the richness of the experience in public schools, and the quality of the educational opportunities.

60. Because of their religious and personal beliefs about raising children, the N [REDACTED] object to HCPS's Policy, because it requires school staff to directly interfere with their ability to parent and to assist their children should one of them struggle with gender identity.

D. N [REDACTED] and J [REDACTED] S [REDACTED]

61. Plaintiffs N [REDACTED] and J [REDACTED] S [REDACTED] have five children, with three currently enrolled in HCPS schools.

62. The S [REDACTED]s have three children, all boys, in HCPS schools. One of their children is currently enrolled in the fourth grade at Bluestone Elementary School. The other two—twin boys—are currently in second grade at Bluestone Elementary School.

63. Like the N [REDACTED], the S [REDACTED]s value the public-school system. For the S [REDACTED]s, too, it is their only choice for their children's education. Private school is not a financially viable option and homeschooling is equally untenable for them.

64. But even if they had other schooling choices, the S [REDACTED]s would send their children to HCPS schools. They value the range of people and opinions, the richness of the experience in public schools, and the quality of the educational opportunities.

65. They also value their role and responsibilities as parents. And feel strongly that they need to be able to parent their children well, which they cannot do if the school hides information from them or lies to them about their children's identity, mental health, or other struggles.

66. The S██████s want their children at HCPS schools, but they also want to be informed so they can continue to do what is best for their children.²

II. Plaintiffs' Philosophical and Religious Beliefs

67. All six Plaintiffs are practicing Christians who base their beliefs on the Bible and strive to live out their Christian faith daily in their work, home, and families.

68. Ms. F██████ is an active member of her church where she has volunteered for years with youth. She has run a special-needs clinic through her church and regularly facilitates prayer meetings with friends and colleagues. Ms. F██████ has also mentored many students over the years through her involvement with her church.

69. Ms. M██████ has been a practicing Christian since she was a child. She taught for four years before going into missionary work and then served at a school in Quito, Ecuador, for five years. She met her husband in Ecuador, where he was a teacher at the same school, before returning to the United States. She is currently an active member of a nondenominational Christian church where she volunteers and runs a Bible study out of her home.

70. The N██████ are practicing Christians. Before pursuing a teaching career, mission work took Ms. N██████ to a home for street children in Asunción, Paraguay, where she served for one year. That experience profoundly affected Ms. N██████ and prompted a deep care for children—particularly children from difficult backgrounds.

² Where appropriate within this complaint, Ms. F██████, Ms. M██████, and Ms. N██████ are collectively referred to as "Teacher Plaintiffs." Similarly, where appropriate within this complaint, the N██████s and the S██████s are collectively referred to as "Parent Plaintiffs."

The N [REDACTED] have been active members of their current Presbyterian (PCA) church for approximately 18 years, where they helped start ESL classes for the congregation, and have supported by volunteering in the nursery, Sunday school, and home groups.

71. The S [REDACTED]s are practicing Christians and active in their local church. Mr. S [REDACTED] is employed by his church as the worship leader for the Spanish-speaking service, and Ms. S [REDACTED] serves on the women's ministry team and the children's ministry team at the church. Together, the S [REDACTED]s are very involved in many aspects of church life and missions, including being team leaders on an exploring Christianity course as well as hosting a Bible study at their home.

72. Each of the Plaintiffs has sincerely held religious beliefs that shape and govern their views about human nature, childrearing, gender identity, and honesty, among other topics.

73. Plaintiffs believe that God created the family and charged parents with the primary responsibility of raising, guiding, and caring for their children.

74. Plaintiffs believe that parents and family play an essential role in maintaining students' physical and mental health and wellbeing.

75. Plaintiffs' faith teaches that God created two sexes, male and female, and that these two sexes are a core part of God's intended design for humanity.

76. Plaintiffs believe that each of us is born with a fixed biological sex that is a gift from God; it is not an arbitrary imposition subject to change.

77. Teacher Plaintiffs' sincerely held religious beliefs prevent them from personally affirming or communicating views about human nature and gender identity that are contrary to their religious beliefs; to do so would be lying or dishonesty.

78. Teacher Plaintiffs also believe that referring to a child using "preferred pronouns" that are inconsistent with the child's biological sex is harmful to the child, because it communicates a message to and about the child that is untrue.

79. Similarly, Teacher Plaintiffs' sincerely held religious beliefs prevent them from lying to or intentionally deceiving the parents of the children they teach.

80. Teacher Plaintiffs also believe that they must treat every student with love, dignity, and respect, because they believe all people are created in the image of God, and God calls us to love all.

81. Teacher Plaintiffs are committed to respectfully addressing all students in a way that does not require them to violate their sincerely held religious beliefs, including a commitment to not lie to or intentionally deceive parents about how a student is being addressed at school. They have done so and intend to continue doing so. For example, Teacher Plaintiffs can avoid using requested pronouns when doing so would violate their religious beliefs, while simultaneously not intentionally using other gender-specific pronouns that a student has specifically asked them not to use. But as explained below, the Policy does not permit them to continue doing this.

82. Parent Plaintiffs have sincerely held religious beliefs that shape and govern their approach to parenting.

83. Parent Plaintiffs believe they have a God-given responsibility to provide for and participate in all aspects of their children's upbringing, and to do so in a way that is consistent with their faith.

84. This responsibility extends not just to spiritual growth and training, but also to the arenas of education, physical, mental, and emotional health, and beyond.

85. Parent Plaintiffs' faith also dictates the advice and guidance they provide to their children on any number of difficult or potentially life-altering decisions, in whatever arenas those difficulties or challenges may arise.

86. Parent Plaintiffs also believe that, because of children's inexperience and immaturity, children often do not appreciate the long-term consequences of their actions and thus need the advice and counsel of their parents to reach sound decisions.

87. Parent Plaintiffs want to protect their children from making potentially irreversible and life-changing decisions that the children may later regret.

88. Parent Plaintiffs believe that children should not be encouraged to undertake “social transition” or “medical transition,” because of the complexity of the issues involved and children’s inability to thoroughly assess the long-term consequences of such actions.

89. As a direct result of their religious and philosophical beliefs, if Parent Plaintiffs’ children ever experience discomfort with their biological sex, they would not “affirm” whatever beliefs or feeling their children might have about their sex.

90. Instead, Parent Plaintiffs would seek to help their child get the medical and psychotherapeutic help necessary to identify and address the underlying cause of the discomfort, while continually affirming: (a) that their child is “fearfully and wonderfully made,” *Psalms* 139:14; (b) God’s unfailing and never-ending love for the child; and, (c) Parent Plaintiffs’ unfailing and never-ending love for the child.

91. Parent Plaintiffs would not affirm or transition their children to a gender that is inconsistent with their God-given sex. Instead, they would seek to walk with their children through their individual struggles, encouraging their children that they are loved and reminding their children that they do not have to conform to society’s stereotypes.

92. Regardless of their children’s feelings, beliefs, or actions about their sex, Parent Plaintiffs will never stop loving them or love them any less.

III. HCPS adopts a new Policy on transgender students.

93. In Spring 2021, VDOE issued “Model Policies for the Treatment of Transgender Students in Public Elementary and Secondary Schools” and directed all Virginia local school boards to “adopt policies consistent with these model policies by the beginning of the 2021–2022 school year.” Va. Dep’t of Educ., *Gender Diversity*

(last visited May 26, 2022);³ see Mem. from James F. Lane, Superintendent of Public Instruction, Va. Dep't of Educ., on Complying with House Bill 145 (2020) and Senate Bill 161 (2020) Regarding Model Policies Concerning the Treatment of Transgender Students (July 30, 2021).⁴

94. Following VDOE's mandates, on August 17, 2021, HCPS modified its "Policy 401, Equal Educational Opportunities/Nondiscrimination" to add "gender identity" to the list of protected classes. Ex. 1 at 1 (HCPS Policy 401); see Ex. 2 at 1 (Aug. 3, 2021 HCPS Board Meeting Minutes) (adopting Policy 401).

95. HCPS then developed and issued guidance on this Policy change that specifically detailed the new requirements and provisions concerning the treatment of transgender students in HCPS schools that went beyond the wording of VDOE's model policies.

96. That guidance was rolled out to school staff and the public and implemented for the 2021–2022 school year.

97. HCPS staff and students are currently required to abide by the new Policy.

A. The Policy requires teachers and staff, upon a student's request, to change and use the student's preferred name and pronouns without permission from or knowledge of parents.

98. The HCPS Policy mandates "[n]ew practices regarding use of preferred names and pronouns." Ex. 3 at 5.

99. The Policy requires employees to "immediately" start asking students for their "preferred names and pronouns." *Id.* at 6.

100. The Policy also requires that teachers and staff "[a]lways utilize a student's preferred name and pronouns." *Id.* at 7 (emphasis in original).

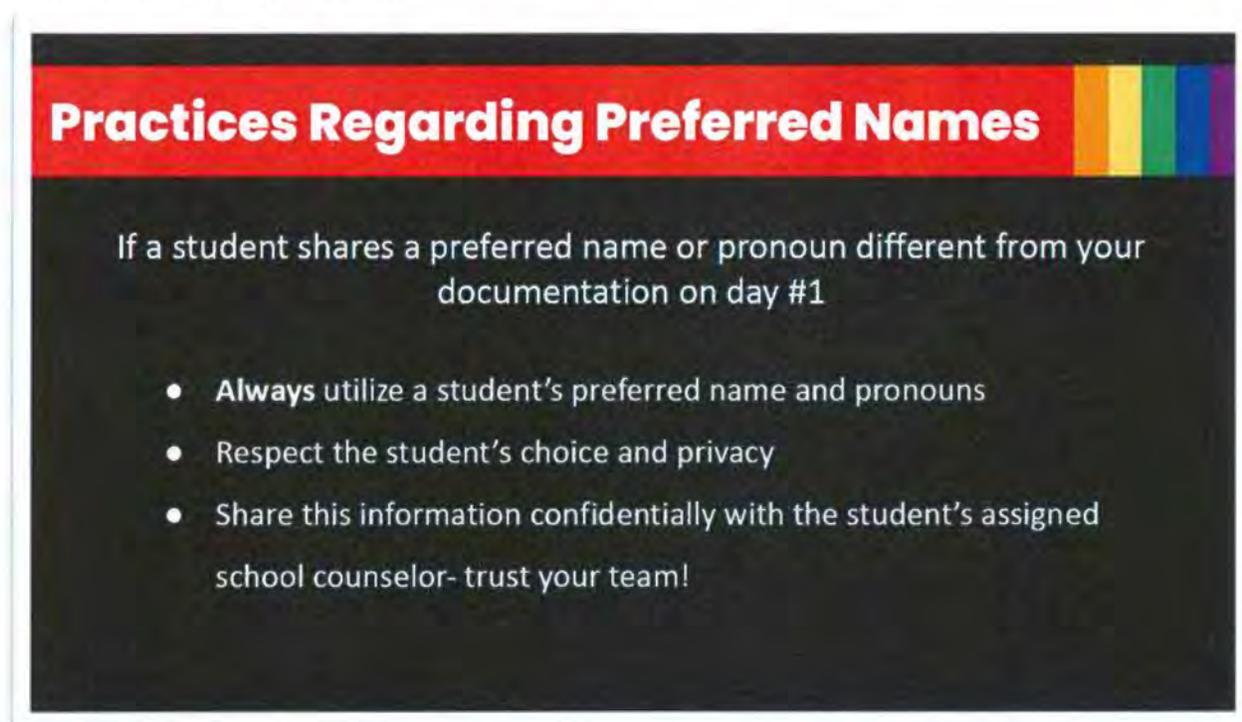
³ <https://www.doe.virginia.gov/support/gender-diversity/index.shtml>

⁴ https://www.doe.virginia.gov/administrators/superintendents_memos/2021/202-21.pdf

101. The Policy directs HCPS staff to ask students for their “preferred names and pronouns” and to utilize those “preferred names and pronouns” without any notice to the students’ parents. *Id.* at 6; *see id.* at 8.

102. The Policy also dictates that no parental consent is necessary to change a student’s name or pronoun. *See id.* at 8.

103. A training slide HCPS used to communicate these aspects of the Policy appears on the following page:



Id. at 7.

B. The Policy requires HCPS staff to adopt and abide by gender support plans that are created without parental notice or consent.

104. As part of the Policy, HCPS adopted a “Gender Transition Action Plan.”

105. According to that Plan, “School counselors should serve as the lead in the intervention process, working collaboratively with administration and, *when appropriate, families.*” Ex. 4 at 1 (emphasis added).

106. The Plan directs school counselors to convene a transition meeting with a student if the counselor “receives information directly from a student or from a reliable resource regarding a gender transition.” *Id.*

107. The counselor then completes a transition form “in collaboration with the student”—but not with the student’s parents. *Id.* at 2.

108. The Policy, therefore, directs HCPS counselors to convene a transition meeting, create an individualized gender plan for a student, and implement that plan at school without parental notice or consent—indeed, with no parental involvement whatsoever in the process.

109. The Gender Transition Action Plan specifically directs the counselor to ask the child, “Are your guardian(s) supportive of your gender status?”; and then determine, “If no, what considerations must be accounted for in implementing this plan?” *Id.*

110. The school counselor therefore decides whether it is “appropriate” to involve parents and whether to proceed with a school-sanctioned “social transition.” Each of these steps are taken without parental notice, consent, or involvement.

and implement it without parental notice, consent, or involvement, it also directs HCPS staff to conceal information from parents and to deceive them.

114. The Policy's direction that staff conceal information from and deceive parents contravenes HCPS's recognition that students who identify as transgender are "high risk" and may need additional care—care that parents are best equipped to provide.

115. According to HCPS's own training materials, students who identify as transgender are "a high-risk population that should be monitored for mental health concerns and issues related to bullying and harassment." Ex. 3 at 6.

116. According to HCPS, "92.5% of LGBTQ+ students experience mental health concerns." Ex. 6 at 12.

117. Nevertheless, HCPS's Policy instructs teachers and staff to share information about a child's "preferred name and pronouns" with the child's "assigned school counselor," but not with the child's parents. Ex. 3 at 7.

118. In fact, HCPS's Policy urges teachers and staff to use special care when it comes to "parent communication." *See id.* at 8.

119. HCPS's Policy forbids teachers and staff from discussing concerns with parents without a child's consent.

120. Specifically, HCPS's Policy states that "[a] student's gender transition should be considered **confidential**" when it comes to communications with parents. *Id.* (emphasis in original).

121. HCPS's Policy further states: "It is highly detrimental to out a student to . . . a student's family. All communication should be *in collaboration with the student.*" *Id.* (emphasis in original).

122. HCPS's Policy instructs teachers and staff to "connect with the student's school counselor" to see "whether the student's parent/guardian is in support of the name or pronoun change." *Id.*

123. HCPS's Policy forbids teachers and staff from asking for parental permission to use a "preferred name." *See id.*

124. HCPS's Policy instructs teachers and staff to deceive parents: "If the parent/guardian is NOT aware, you should utilize the student's preferred name at school but not in any communication with the parent/guardian." *Id.*

125. A training slide HCPS used to communicate these aspects of the Policy appears on the following page:

Parent Communication

A student's gender transition should be considered confidential. It is highly detrimental to out a student to another school staff, peers, or a student's family. All communication should be *in collaboration with the student*.

If you are unaware of whether the student's parent/guardian is in support of the name or pronoun change, connect with the student's school counselor .	If a student has not shared their gender identity or preferred name with their parent/guardian, it is not appropriate to take the lead on sharing this information or to contact the parent/guardian to ask permission to utilize the preferred name	If the parent/guardian is NOT aware, you should utilize the student's preferred name at school but not in any communication with the parent/guardian
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Id.

126. According to HCPS, "[o]nly 27% of trans youth said their parents were supportive"—meaning that 73% of the time, HCPS intends to deceive and conceal information from parents and expects Teacher Plaintiffs and other employees to do the same. Ex. 6 at 17.

IV. HCPS implements the Policy and trains HCPS staff about the Policy's requirements.

127. HCPS began implementing and enforcing the new Policy for the 2021–2022 school year.

128. As part of that implementation, HCPS trained staff on the Policy's requirements. That training included a slide deck and related training program to inform teachers and staff of the new HCPS Policy and their duties under the new Policy.

129. The slides referenced in Sections III.A. and III.C, above, came from HCPS's training slide deck, called "Supporting Our Transgender Students" or the "SOTS Presentation." *See generally* Ex. 3.

130. HCPS agents and employees presented the SOTS Presentation to teachers and staff.

131. Specifically, on or about August 9, 2021, Lora Cantwell (HCPS Mental Health Counselor) and April Howard (Chief Officer for Student Support) provided Policy training for all school counselors division-wide.

132. During that training session, counselors were instructed to report to HCPS administration any teachers who were not using "preferred names and pronouns" as required by HCPS's Policy.

133. On or about August 10, 2021, an HCPS employee provided training for Skyline Middle School teachers about HCPS's new Policy using the same slide deck that was used to train school counselors, the SOTS Presentation. *See generally* Ex. 3.

134. Ms. F [REDACTED] attended a portion of this training and was sent the SOTS Presentation, which she reviewed.

135. On or about August 11, 2021, Michael King (HCPS Division Coordinator for Health and Physical Education) provided Policy training for elementary-school physical-education teachers.

136. Ms. M [REDACTED] did not attend this training, but other staff in her building did attend the training. Ms. M [REDACTED] became aware of the Policy and its requirements for

HCPS teachers and staff around this time. She has also seen the slides associated with HCPS's Policy training, including the SOTS Presentation.

137. On or about August 19, 2021, Lora Cantwell provided Policy training for all HCPS high-school teachers using the SOTS Presentation. *See generally* Ex. 3.

138. Ms. N [REDACTED] attended this training and viewed these slides.

139. On information and belief, Division employees provided similar training in all HCPS schools around the same time.

140. In addition to initial training on the Policy, the Division hosted a mandatory training for HCPS administrators and counselors in accordance with the Policy provisions.

141. The training was conducted by the organization "Side By Side" on September 7, 2021.

142. The training slides from Side by Side's presentation are reproduced as Exhibit 7.

143. Side by Side's training presentation: (a) emphasized the need to "[h]ave clear conversation with all school staff on the expectation to use students' chosen name and pronoun," *id.* at 32; (b) claimed it is "illegal to out students to family," and that no regulation *required* parental notification, *id.* at 42; and, (c) told HCPS staff that "[i]n each of your schools you have" children who identify as transgender, *id.* at 52.

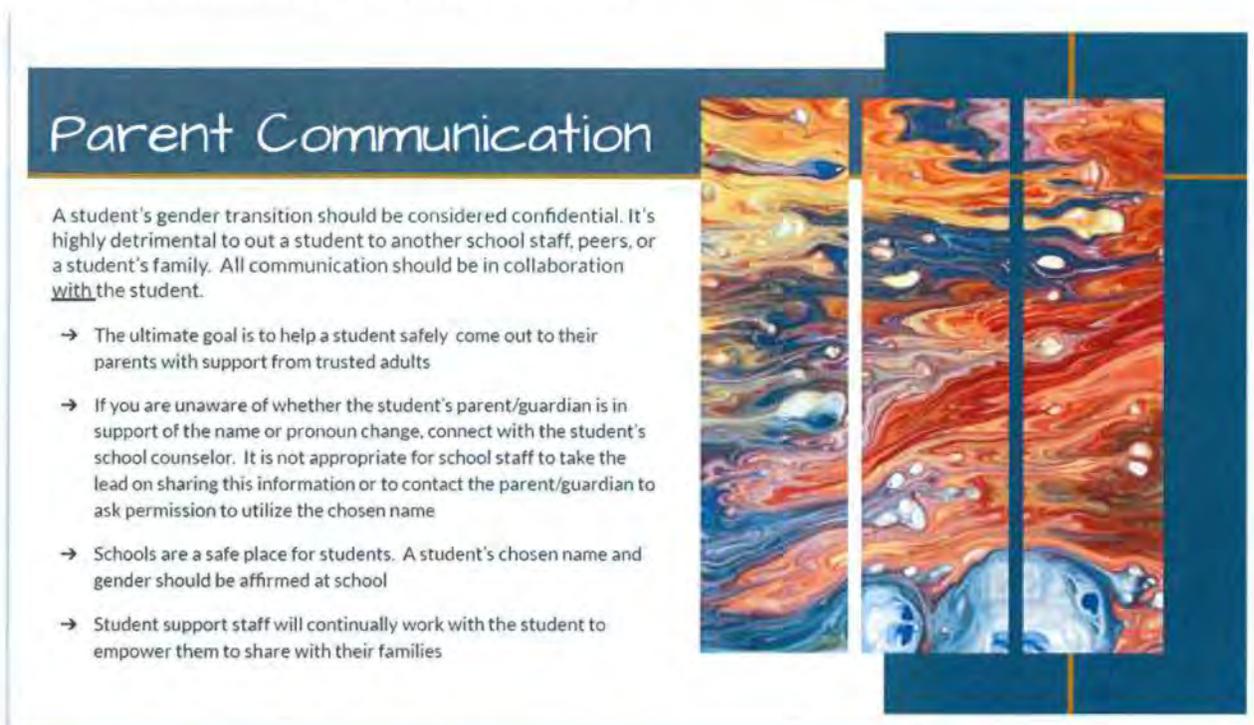
144. That training was followed on October 19, 2021, by another presentation on the HCPS Policy's provisions, entitled "Supporting ALL Students: October Bullying Prevention Highlights, reproduced as Exhibit 6 ("October Bullying Presentation").

145. The October Bullying Presentation was presented by April Howard and her staff during a School Board work session. The slides were then posted on HCPS's website and made available to students, all HCPS staff, and the public through that

website. *See generally* Ex. 6 (reproducing October Bullying Presentation);⁶ *see also* HCPS Bd., Work Session Agenda, Item 5.C, *Support Services for All Students* (Oct. 19, 2021) (documenting Ms. Howard’s presentation to HCPS Board).⁷

146. The October Bullying Presentation again stated HCPS’s “[n]ew practices regarding the use of chosen names and pronouns . . . as well as steps for documenting name changes.” Ex. 6 at 11.

147. The October Bullying Presentation also included a slide that discussed “Parent Communication,” which appears below:



The slide is titled "Parent Communication" in a white, sans-serif font on a dark blue background. Below the title, there is a paragraph of text and a bulleted list of five points. The right side of the slide features a vertical strip of abstract, colorful marbled patterns in shades of orange, red, blue, and white, set against a dark blue background.

Parent Communication

A student’s gender transition should be considered confidential. It’s highly detrimental to out a student to another school staff, peers, or a student’s family. All communication should be in collaboration with the student.

- The ultimate goal is to help a student safely come out to their parents with support from trusted adults
- If you are unaware of whether the student’s parent/guardian is in support of the name or pronoun change, connect with the student’s school counselor. It is not appropriate for school staff to take the lead on sharing this information or to contact the parent/guardian to ask permission to utilize the chosen name
- Schools are a safe place for students. A student’s chosen name and gender should be affirmed at school
- Student support staff will continually work with the student to empower them to share with their families

Id. at 16.

148. The “Parent Communication” slide highlighted that “[a] student’s gender transition should be considered confidential,” that “[a]ll communication should be in collaboration with the student” (not the parents), and that if an HCPS staff member

⁶ [https://go.boarddocs.com/vsba/hcsva/Board.nsf/files/C7XFXZ41537C/\\$file/HCPS%20Student%20Support%20School%20Board%20October%20Presentation.pdf](https://go.boarddocs.com/vsba/hcsva/Board.nsf/files/C7XFXZ41537C/$file/HCPS%20Student%20Support%20School%20Board%20October%20Presentation.pdf)

⁷ <http://go.boarddocs.com/vsba/hcsva/Board.nsf/goto?open&id=C7QH3P45ED8A>

is “unaware of whether the student’s parent/guardian is in support of the name or pronoun change,” they should “connect with the student’s school counselor” and let the counselor handle the issue from there. *Id.*

149. It also stated that “[i]t is not appropriate for school staff to take the lead on sharing this information or to contact the parent/guardian to ask permission to utilize the chosen name” and indicated that “[s]tudent support staff” will be the ones to handle when (and whether) the school will involve families in the discussion. *Id.*

150. The October Bullying Presentation also noted that school counselors “and many others participated in Side by Side training,” and that HCPS had “[p]lans for additional training for all staff which will take place this year.” *Id.* at 11.

151. Following the October Bullying Presentation that was posted online, HCPS continued to train staff on the Policy provisions. On information and belief, HCPS ran training for staff at Keister Elementary School, as well as other schools. The Keister Presentation used a modified 10-page slide deck modeled after the October Bullying Presentation. *See generally Ex. 8.*

152. The Keister Presentation again stated the Policy requirements mandating the use of “a student’s chosen name and pronouns” at school, *id.* at 7, while directing HCPS staff not to use them “in any communication with the parent,” whenever “the parent/guardian is NOT aware,” *id.* at 8.

153. HCPS continued to convey this Policy of concealment to HCPS teachers and staff during the 2021–2022 school year.

154. For example, during a February 2022 planning meeting for special-education teachers at Skyline Middle School, the Division’s secondary special-education coordinator trained teachers on how to conceal information about a child’s gender identity from that child’s parents.

155. Specifically, the secondary special-education coordinator told teachers not to include information about gender-identity issues on certain paperwork that would be transmitted to the high school because parents might see it.

156. Instead, the secondary special-education coordinator instructed teachers to note on the paperwork that there was further information about the student that should be discussed orally.

157. Teacher Plaintiffs are currently under the obligation to abide by the Policy by actively concealing information from parents of any student dealing with gender confusion.

158. Teacher Plaintiffs are also currently mandated by the Policy to affirm a student's preferred pronouns, even when inconsistent with the student's biological sex, and to implement a student's gender-transition plan as dictated by the school counselor working with that child, but must deceive that student's parents about these matters unless the student consents to disclosure.

159. On information and belief, HCPS adopted the Policy without notifying Parent Plaintiffs or other parents of HCPS students.

160. English is the "home language" of a minority of HCPS students (35.5%). *See* Harrisonburg City Pub. Schs., *KG-12th Grade Students – Home Language* (Feb. 11, 2022).⁸

161. "Spanish is the most widely spoken home language" in the Division, with HCPS reporting that Spanish is the home language of 48.9% of HCPS students. *Id.*

162. Because of this linguistic diversity, "HCPS provides communications and translation in the seven major home languages of HCPS families." *Id.*; *see, e.g.*, Harrisonburg City Pub. Schs., *Welcome Center* (last visited May 26, 2022)⁹ (providing

⁸ <https://docs.google.com/presentation/d/1JyjKAGzbbjEP4CzsCY9SORIyvHqz7Cg71Vn3otqWuzY/edit#slide=id.p2>

⁹ <https://harrisonburg.k12.va.us/District/1150-Untitled.html>

“Step by Step Procedures for Registering Your Child” in English, Spanish, Russian, and Arabic).

163. Nevertheless, on information and belief, HCPS has not translated the Policy or related materials into Spanish or the many other languages spoken by the diverse families who live in the Division.

V. The Policy contradicts the wisdom of medical experts that study and treat gender dysphoria.

164. The last decade has seen an exponential increase in the number of teens and children struggling with gender dysphoria. In 2013, the estimated incidence of gender dysphoria in adults was between 0.002% and 0.014%.¹⁰ However, recent surveys indicate a marked increase, with one survey finding that as many as 9% of high-school students self-identify as experiencing discordance between their sex and gender identity.¹¹

165. The medical understanding of gender dysphoria, particularly among children, is still developing and the causes of transgenderism, gender dysphoria, and discomfort with one’s biological sex are still largely unknown.

166. However, experts offer several interconnected explanations for the increase in gender dysphoria, including the visibility of transgender issues in media and popular culture; the increased attention of gender identity on social media and the internet more generally; and the increased awareness and availability of puberty blockers and cross-sex hormones.¹²

¹⁰ *The Diagnostic and Statistical Manual of Mental Disorders*, Fifth Edition (2013), <https://doi.org/10.1176/appi.books.9780890425596>.

¹¹ See Kidd et al., *Prevalence of Gender-Diverse Youth in an Urban School District*, *Pediatrics* (2021) 147(6), <https://doi.org/10.1542/peds.2020-049823>; see also Zucker, *Adolescents with Gender Dysphoria: Reflections on Some Contemporary Clinical and Research Issues*, *Archives of Sexual Behavior* (2019), <https://doi.org/10.1007/s10508-019-01518-8>.

¹² *Id.* at 1.

167. Experts have also noticed a significant shift in the demographics of individuals presenting with gender dysphoria. There are more female cases documented than ever before, as well as a rise in “rapid onset” gender dysphoria in adolescents (comprised of a disproportionate number of biological females) with no prior history of gender dysphoria in childhood.¹³

168. Within this group, experts are finding several concerning insights including “clustering” of “rapid onset” gender dysphoria among females in specific schools and among specific friend groups, strongly suggesting social causes for gender dysphoria among these middle- and high-school students.¹⁴

169. During middle school and high school, children often build strong relationships with their teachers, coaches, and other school staff. Because of this, school staff can be among the first adults with whom a child will talk about gender confusion or gender dysphoria.

170. Children who struggle with their gender identity or suffer from gender dysphoria often seek professional, medical intervention. This intervention can take the form of talk-therapy, assistance with social transition (*i.e.*, changing names, pronouns, clothing, or other characteristics to conform with an expressed gender

¹³ Zucker (2019) at 4; Littman, *Parent reports of adolescents and young adults perceived to show signs of a rapid onset of gender dysphoria*, PLoS ONE, 13(8) e0202330 (2018), <https://doi.org/10.1371/journal.pone.0202330>, at 30.

According to pioneering gender therapist Dr. Erica Anderson, “The data are very clear that adolescent girls are coming to gender clinics in greater proportion than adolescent boys. And this is a change in the last couple of years. And it’s an open question: What do we make of that? We don’t really know what’s going on. And we should be concerned about it.” *A Trans Pioneer Explains Her Resignation from the US Professional Association for Transgender Health*, Quillette (Jan. 6, 2022), <https://quillette.com/2022/01/06/a-transgender-pioneer-explains-why-she-stepped-down-from-uspath-and-wpath/>; see also Zucker (2019) at 2 (noting a switch from 1:2 female to male cases in 2005 to 2:1 female to male cases in recent samples, with some samples showing the number as high as 7:1 female to male cases).

¹⁴ Littman (2018) at 32.

identity), puberty blockers, cross-sex hormones, and even surgery to change their anatomy.

171. Gender-dysphoric children often present with unique mental-health concerns and are frequently diagnosed with serious comorbidities, including mental developmental disabilities, autism, ADHD, and prior psychiatric illnesses.¹⁵

172. Consequently, mental-health professionals do not put forth a one-size-fits-all approach when a child experiences discomfort with, or distress over, the child's biological sex.¹⁶

173. Mental-health professionals believe that children experiencing discomfort or distress over their biological sex can often learn to find comfort with their biological sex and therefore support psychotherapy to help identify and address the underlying causes of the dysphoria.¹⁷

174. Indeed, multiple studies have found that the vast majority of children (roughly 80–90%) who experience discomfort with their sex, including those suffering from gender dysphoria, ultimately find comfort with their biological sex and cease experiencing discomfort or distress as they age—assuming they do not transition.¹⁸

¹⁵ See generally Reisner et al., *Mental Health of Transgender Youth in Care at an Adolescent Urban Community Health Center: A Matched Retrospective Cohort Study*, *Journal of Adolescent Health* (2015) 56(3), <https://doi.org/10.1016/j.jadohealth.2014.10.264>; van der Miesen et al., *Is There a Link Between Gender Dysphoria and Autism Spectrum Disorder?*, *Journal of the American Academy of Child & Adolescent Psychiatry* (2018) 57(11), <https://doi.org/10.1016/j.jaac.2018.04.022>; Becerra-Culqui et al., *Mental Health of Transgender and Gender Nonconforming Youth Compared with Their Peers*, *Pediatrics* (2018) 141(5), <https://doi.org/10.1542/peds.2017-3845>; Littman (2018).

¹⁶ See Zucker (2019) at 6–9 (surveying competing treatment approaches).

¹⁷ See Zucker, *Different strokes for different folks*, *Child and Adolescent Mental Health*, 25(1) (2020), <https://doi.org/10.1111/camh.12330>; Levine, *Reflections on the Clinician's Role with Individuals Who Self-identify as Transgender*, *Archives of Sexual Behavior* (2021), <https://doi.org/10.1007/s10508-021-02142-1> at 3533-3534.

¹⁸ See, e.g., Zucker (2019) at 7 (summarizing studies); Levine, *Reflections* (same); Cantor, *Transgender and Gender Diverse Children and Adolescents: Fact-Checking of*

175. Concerningly, there is an increasing emergence of “detransitioners”—teenagers and young adults who had transitioned and lived in a transgender identity for a number of years, and then “detransitioned” or changed back to a gender identity matching their sex.¹⁹

176. Medical experts do agree that social transition has a profound effect on the outcomes of children with gender dysphoria. One researcher observed that a partial or complete gender social transition prior to puberty “proved to be a unique predictor of persistence,”²⁰ and the Endocrine Society noted in its 2017 Guidelines, “If children have completely socially transitioned, they may have great difficulty in returning to the original gender role upon entering puberty.”²¹

177. Prominent expert Dr. Kenneth Zucker, who for over three decades ran one of the leading clinics in the world for children with gender dysphoria, has written that “parents who support, implement, or encourage a gender social transition (and clinicians who recommend one) are implementing a psychosocial treatment that will increase the odds of long-term persistence.”²²

AAP Policy, *Journal of Sex & Marital Therapy*, (2019) 46(4), <https://doi.org/10.1080/0092623X.2019.1698481>.

¹⁹ See Singal, *When Children Say They’re Trans*, *The Atlantic*, July/August 2018, <https://www.theatlantic.com/magazine/archive/2018/07/when-a-child-says-shes-trans/561749/>; McCann, *When girls won’t be girls*, *The Economist* (Sept. 28, 2017), <https://www.economist.com/1843/2017/09/28/when-girls-wont-be-girls>; Zubrow, *Inside the 60 Minutes report on transgender health care issues*, CBS (May 23, 2021), <https://www.cbsnews.com/news/60-minutes-transgender-health-care-issues-2021-05-23/>.

²⁰ Singh et al., *A Follow-Up Study of Boys with Gender Identity Disorder*, *Frontiers in Psychiatry* (2021), <https://doi.org/10.3389/fpsy.2021.632784>, at 12.

²¹ Hembree et al., *Endocrine Treatment of Gender-Dysphoric/Gender-Incongruent Persons: An Endocrine Society Clinical Practice Guideline*, *The Journal of Clinical Endocrinology & Metabolism* (2017) 102(11), at 3879.

²² Zucker, *The Myth of Persistence: Response to “A Critical Commentary on Follow-Up Studies & ‘Desistance’ Theories about Transgender & Gender Non-Conforming Children” by Temple Newhook et al.*, 19:2 *International Journal of Transgenderism* 231 (2018), <https://www.researchgate.net/publication/325443416>.

178. This observable phenomenon has led other medical professional voices in the field to describe social transition of children as a “medical treatment.”

179. Indeed, the World Professional Association for Transgender Health (WPATH) recommends that health professionals *defer to parents* “as they work through the options and implications,” even if they ultimately “do not allow their young child to make a gender-role transition.”²³

180. In a recent opinion piece in the Washington Post, pioneering gender therapists Dr. Laura Edwards-Leeper and Dr. Erica Anderson have emphasized the importance of parental involvement.²⁴

181. The risks of pursuing “gender affirming” treatment are increasingly well documented, and include physical risks to fertility, bone, and cardiovascular health, as well as significant psychosocial risks and yet unknown medical risks.²⁵ This is the case notwithstanding the assessment of the quality of evidence underlying pediatric gender transition to be of “very low quality.”²⁶

182. Despite these latest scientific discoveries about the nature and treatment of gender dysphoria, through their Policy, HCPS insists on pursuing a blunt, one-size-fits-all approach that circumvents parents and fails to take into account the serious long-term consequences for the children involved. HCPS has no lawful authority to so profoundly interfere with the life-course of minor students.

²³ World Professional Association for Transgender Health (WPATH) (2012), *Standards of Care for the Health of Transsexual, Transgender, and Gender Nonconforming People*, 7th Version, <https://www.wpath.org/publications/soc>, at 17.

²⁴ Edwards-Leeper & Anderson, *The mental health establishment is failing trans kids*, Washington Post, November 24, 2021, <https://www.washingtonpost.com/outlook/2021/11/24/trans-kids-therapy-psychologist/>.

²⁵ Levine et al., *Reconsidering Informed Consent for Trans-Identified Children, Adolescents, and Young Adults*, *Journal of Sex & Marital Therapy* (2022), <https://doi.org/10.1080/0092623X.2022.2046221>.

²⁶ Levine (2022), at 7.

VI. The Policy harms Teacher Plaintiffs and violates their rights.

183. HCPS has communicated its Policy to HCPS employees, and Teacher Plaintiffs are aware of the Policy and understand the Policy's requirements.

184. As noted above, school counselors were instructed to report teachers who do not use preferred names and pronouns in accordance with the Policy.

185. HCPS has stated on its website that it intends to leverage its "non-discrimination and anti-harassment" policies to prohibit not only "actual" discrimination but also "perceived discrimination." *See* Ex. 9 (HCPS's Inclusivity Statement).²⁷

186. On information and belief, HCPS intends to deem noncompliance with the Policy as a form of discrimination or harassment.

187. Under HCPS's nondiscrimination policy, discrimination is punishable by "discipline up to and including expulsion or discharge." Ex. 1 at 3.

188. Similarly, under HCPS's harassment policies, harassment is punishable by "discipline up to and including a recommendation for expulsion or discharge." Ex. 10 at 3 (HCPS Policy § 437(IV)(A)(3)); Ex. 11 at 3 (HCPS Policy § 646(IV)(A)(3)).

189. The Policy impacts, and will continue impacting, Teacher Plaintiffs.

190. According to Side by Side's training, which HCPS sponsored and endorsed, there are students who struggle with gender identity in each of the schools in which Teacher Plaintiffs teach. Ex. 7 at 52.

191. Accordingly, each Teacher Plaintiff is likely to interact with students in their schools who identify as transgender or otherwise struggle with gender identity, and who request different names and pronouns because of that identity.

192. Specifically, Ms. F [REDACTED], who is a special-education teacher at Skyline Middle School, has previously worked with two students at Skyline Middle School who

²⁷ <https://docs.google.com/document/d/1iE8ilmMTumNNEhUEPMUHF8ZXHsRFHaXzZ1YnR76q04s/edit#heading=h.gjdgxs>

either identified as transgender or otherwise struggled with their gender identity, and is currently working with one such student.

193. Including the three students she has worked with, Ms. F [REDACTED] is aware of at least ten students at Skyline Middle School who either identify as transgender or otherwise struggle with their gender identity.

194. Ms. F [REDACTED] is currently interacting with and will continue to interact with the student she is currently working with, as well as other students who identify as transgender in the future.

195. Ms. M [REDACTED] is a reading-specialist teacher at Spotswood Elementary School.

196. Ms. M [REDACTED] is aware of elementary-aged children in the local area who struggle with gender identity.

197. Ms. M [REDACTED] will likely engage with students at Spotswood Elementary School who identify as transgender.

198. Ms. N [REDACTED] an ESL teacher at Harrisonburg High School, is aware of several students at Harrisonburg High School who struggle with gender identity, including one in her class.

199. Ms. N [REDACTED] has already been working with this student in her ESL class.

200. Ms. N [REDACTED] will continue interacting with this student and other students who struggle with gender identity in the future.

201. All Teacher Plaintiffs have sincerely held religious beliefs that prevent them from communicating HCPS's messages as required by the Policy, including the Policy's messages about sex and gender, and its message that it is appropriate to lie to or intentionally deceive parents about their children's wellbeing and education.

202. None of the Teacher Plaintiffs will use a student's preferred pronouns if they do not correspond with the student's biological sex.

212. The S [REDACTED] s have three children in HCPS schools: one in fourth grade and two in second grade at Bluestone Elementary School.

213. Teachers at Skyline Middle School have received training under the Policy.

214. Physical-education teachers in elementary schools have received training under the Policy.

215. The Policy requires all HCPS employees, upon a student's request, to immediately start referring to that student by the student's preferred name and pronouns, even when these differ from the student's biological sex.

216. Referring to a student by a name or pronouns that differ from the student's given name and biological sex is part of the medical or psychosocial treatment for gender dysphoria known as social transition.

217. Experts on sex and gender recommend that parents be involved in any decision about whether their children should undergo social transition or other medical or psychosocial treatments for gender dysphoria.

218. Yet the Policy forbids HCPS employees from even notifying Parent Plaintiffs if their children were to seek to undergo social transition—let alone ask for Parent Plaintiffs' consent to this medical or psychosocial treatment of their children.

219. Worse, the Policy affirmatively requires HCPS employees to hide information from and lie to Parent Plaintiffs about whether their children desire to undergo social transition at school.

220. The Policy thus harms Parent Plaintiffs by preventing them from exercising their right to advise their children about medical or psychosocial treatments, including the risk documented by medical experts that social transition causes gender dysphoria to persist through puberty.

221. Similarly, the Policy harms Parent Plaintiffs by preventing them from exercising their right to raise their children consistent with their sincerely held religious beliefs, including their right to teach their children that God created them either male

or female, and that this is an immutable characteristic their children should celebrate rather than seek to change.

222. Further, the Policy harms Parent Plaintiffs by preventing them from exercising their fundamental right to direct their children's education, because the Policy requires HCPS employees to withhold information from them relevant to their educational decisionmaking, including information about whether their children are experiencing discomfort with their biological sex.

223. Because the Policy forbids HCPS employees from contacting Parent Plaintiffs without students' consent, and because the Policy requires HCPS employees to lie to them, Parent Plaintiffs have no way to know important information about their children's physical and mental health and wellbeing while at school.

224. Thus, the Policy also harms Parent Plaintiffs by denying them access to reliable information about their children's health and wellbeing.

STATEMENTS OF LAW

225. At all times relevant to this Complaint, each and all the acts, policies, and practices alleged in this Complaint were attributed to Defendants who acted under color of a statute, regulation, or custom of the Commonwealth of Virginia.

226. Defendants knew or should have known that they were violating Plaintiffs' constitutional, statutory, and common-law rights, and did violate Plaintiffs' constitutional, statutory, and common-law rights by implementing the Policy in the ways alleged in this Complaint.

227. The Policy that led to the violation of Plaintiffs' constitutional, statutory, and common-law rights remains in effect.

228. Plaintiffs are suffering and will suffer irreparable harm because of Defendants' actions.

229. Plaintiffs have no adequate remedy at law to correct the deprivation of their rights by Defendants.

230. The Policy challenged in this Complaint violates Plaintiffs' constitutional, statutory, and common-law rights, does not serve any legitimate or compelling state interest, and is neither substantially related to nor narrowly tailored to serve any such interests.

231. Defendants' actions have caused irreparable injury, will continue to cause irreparable injury, and threaten to cause irreparable injury to Plaintiffs, including by depriving them of their constitutional, statutory, and common-law rights.

FIRST CAUSE OF ACTION
Violation of Teacher Plaintiffs' right to freedom of speech under the
Virginia Constitution: Compelled Speech
(Va. Const., art. I, § 12)

232. Plaintiffs repeat and reallege each of the allegations contained in paragraphs 1–231 of this Complaint.

233. The Virginia Supreme Court has held that the free-speech protections of Article I, § 12, of the Virginia Constitution are generally “coextensive with the free speech provisions of the federal First Amendment.” *Elliott v. Commonwealth*, 593 S.E.2d 263, 269 (Va. 2004).

234. The right to free speech includes both the decision of what to say and what not to say. *See, e.g., Janus v. Am. Fed'n of State, Cnty., & Mun. Emps., Council 31*, 138 S. Ct. 2448, 2463 (2018) (“Compelling individuals to mouth support for views they find objectionable violates [the First Amendment’s] cardinal constitutional command, and in most contexts, any such effort would be universally condemned.”).

235. In the public-school setting, teachers do not “shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.” *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 506 (1969).

236. Thus, the government must not compel public-school teachers in the school context to affirm a belief or speak a message with which they disagree. *See Barnette*, 319 U.S. at 631.

237. Referring to people using preferred names and pronouns that differ from their biological sex carries a message about gender identity: “People can have a gender identity inconsistent with their sex at birth.” *Meriwether v. Hartop*, 992 F.3d 492, 507 (6th Cir. 2021).

238. The discussion of gender identity, including whether it is appropriate to use preferred names and pronouns that differ from biological sex, is a matter of public concern and public debate. *See Janus*, 138 S. Ct. at 2471–73.

239. Using or not using preferred names and pronouns to refer to students is neither curricular speech nor part of Teacher Plaintiffs’ official duties. *See Garcetti v. Ceballos*, 547 U.S. 410, 421–22 (2006).

240. HCPS has imposed the Policy, which has a blanket requirement that all HCPS employees, including Teacher Plaintiffs, use preferred names and pronouns to personally affirm and communicate HCPS’s preferred message and viewpoint about gender identity.

241. HCPS has threatened to discipline employees who do not use preferred pronouns, including ones that differ from a student’s biological sex, to personally affirm and communicate HCPS’s preferred message and viewpoint about gender identity.

242. Teacher Plaintiffs cannot comply, and therefore do not intend to comply, with the Policy compelling them to personally affirm and communicate HCPS’s preferred message and viewpoint about gender identity.

243. Furthermore, when teachers speak with parents, they communicate messages to the parents about the parents’ children.

244. Lying to or deceiving parents is a matter of public concern and public debate. *See Janus*, 138 S. Ct. at 2471–73.

245. Lying to or deceiving parents is neither curricular speech nor part of Teacher Plaintiffs’ official duties. *See Garcetti*, 547 U.S. at 421–22.

246. HCPS has imposed the Policy, which has a blanket requirement that all employees, when speaking to parents, lie to or deceive those parents if HCPS perceives them to be “unsupportive” of the decision to “socially transition.”

247. HCPS has threatened to discipline employees if they do not lie to or deceive parents under those circumstances.

248. The Policy’s blanket requirement compels Teacher Plaintiffs and other HCPS employees to deceive parents through their speech.

249. Teacher Plaintiffs cannot comply, and therefore do not intend to comply, with the Policy compelling them, when speaking to parents, to lie to or deceive those parents.

250. HCPS has no compelling or even legitimate interest in the Policy’s blanket requirements compelling Teacher Plaintiffs to speak messages about gender identity with which they disagree, nor in compelling them to lie to or deceive parents. *See Ricard v. USD 475 Geary Cnty. Sch. Bd.*, No. 5:22-CV-04015, 2022 WL 1471372, at *8 n.11 (D. Kan. May 9, 2022) (“[T]he fundamental rights that parents have are a valid consideration in determining whether the District has established a legitimate, compelling interest in prohibiting Plaintiff [who was a teacher] from disclosing to parents the preferred name and pronouns the child is using, while threatening Plaintiff with disciplinary sanctions if she violates the policy.”).

251. Additionally, the Policy is not narrowly tailored to serve a compelling governmental interest.

252. Nor does the Policy serve a compelling governmental interest that cannot be achieved through means significantly less restrictive of Teacher Plaintiffs’ free-speech rights.

253. The Policy unlawfully compels, and threatens to compel, Teacher Plaintiffs to personally affirm and communicate messages with which they disagree, contrary to the Virginia Constitution. *See Va. Const. art. I, § 12.*

254. The Policy has caused, is continuing to cause, and will likely cause irreparable injury to Teacher Plaintiffs by depriving them of their constitutional rights.

SECOND CAUSE OF ACTION
Violation of Teacher Plaintiffs' Right to Freedom of Speech Under the
Virginia Constitution; Viewpoint Discrimination
(Va. Const., art. I, § 12)

255. Teacher Plaintiffs repeat and reallege each of the allegations contained in paragraphs 1–254 of this Complaint.

256. The Virginia Supreme Court has held that the free-speech protections of Article I, § 12, of the Virginia Constitution are generally “coextensive with the free speech provisions of the federal First Amendment.” *Elliott*, 593 S.E.2d at 269.

257. “If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein.” *Barnette*, 319 U.S. at 642.

258. “Discrimination against speech because of its message is presumed to be unconstitutional.” *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 828 (1995).

259. Referring to people using preferred pronouns that differ from their biological sex carries a message about gender identity: “People can have a gender identity inconsistent with their sex at birth.” *Meriwether*, 992 F.3d at 507.

260. The discussion of gender identity, including whether it is appropriate to use preferred names and pronouns even when they differ from biological sex, is a matter of public concern and public debate. *See Janus*, 138 S. Ct. at 2471–73.

261. Using or not using preferred pronouns to refer to students is neither curricular speech nor part of Teacher Plaintiffs' official duties. *See Garcetti*, 547 U.S. at 421–22.

262. The Policy requires Teacher Plaintiffs and all other HCPS employees to use preferred names or pronouns to refer to students, even when they differ from a student's biological sex.

263. HCPS has threatened to discipline Teacher Plaintiffs if they do not comply with the Policy's requirement that they use preferred names or pronouns to refer to students, even when they differ from a student's biological sex.

264. The Policy has therefore singled out other viewpoints about gender identity and has forbidden Teacher Plaintiffs, on the pain of discipline, from expressing other viewpoints even indirectly by remaining silent.

265. The Policy, backed by the threat of discipline, has chilled and will chill Teacher Plaintiffs' speech, and would deter a person of ordinary firmness from engaging in protected speech.

266. Teacher Plaintiffs' speech contrary to HCPS's preferred viewpoint has not materially and substantially interfered with efficient operation of a school, prevented HCPS from efficiently providing services to the public, nor threatened to do either.

267. The Policy discriminates against Teacher Plaintiffs' speech based on their viewpoint, contrary to the Virginia Constitution. *See* Va. Const. art. I, § 12.

268. The Policy has caused, is continuing to cause, and will likely cause irreparable injury to Teacher Plaintiffs by depriving them of their constitutional rights.

THIRD CAUSE OF ACTION

Violation of Teacher Plaintiffs' Right to Free Exercise of Religion Under The Virginia Constitution and the Act for Religious Freedom (Va. Const., art. I, § 16; Va. Code § 57-1)

269. Teacher Plaintiffs repeat and reallege each of the allegations contained in paragraphs 1–268 of this Complaint.

270. The Virginia Constitution provides that “all men are equally entitled to the free exercise of religion, according to the dictates of conscience.” Va. Const., art. I, § 16. This section further provides that no one shall “suffer on account of his religious

opinions or belief; but all men shall be free to profess and by argument to maintain their opinions in matters of religion, and the same shall in nowise diminish, enlarge, or affect their civil capacities. And the General Assembly shall not prescribe any religious test whatever.” *Id.*

271. The Virginia Code similarly provides that no one shall “suffer on account of his religious opinions or belief; but that all men shall be free to profess, and by argument to maintain, their opinions in matters of religion, and that the same shall in no wise diminish, enlarge or affect their civil capacities.” Va. Code § 57-1.

272. Teacher Plaintiffs have sincerely held religious beliefs that shape and govern their views and expression about human nature and gender identity, including sincerely held religious beliefs that prevent them from personally affirming or communicating views about human nature and gender identity that are contrary to their religious beliefs, and sincerely held religious beliefs against the use of preferred pronouns that differ from a person’s biological sex.

273. Teacher Plaintiffs also have sincerely held religious beliefs that prevent them from lying to or intentionally deceiving parents.

274. Teacher Plaintiffs’ compliance with their religious beliefs constitutes a religious exercise under Article I, § 16, of the Virginia Constitution.

275. Teacher Plaintiffs would violate their sincerely held religious beliefs if they were to personally affirm and communicate HCPS’s preferred message about gender identity, including through the use of preferred pronouns that differ from a student’s biological sex.

276. Teacher Plaintiffs would violate their sincerely held religious beliefs if they were to lie to or intentionally deceive parents, including through the use of a student’s given name in communications with parents when a preferred name is used at school, or through the use of pronouns consistent with a student’s biological sex in communications with parents when other pronouns are used at school.

277. HCPS has imposed the Policy, which has blanket requirements: that all employees use preferred names and pronouns, even pronouns that differ from a person's biological sex, to personally affirm and communicate HCPS's preferred message and viewpoint about gender identity; and that all employees, when speaking to parents, lie to or deceive those parents if HCPS perceives them to be "unsupportive" of the decision to "socially transition."

278. The Policy, backed by the threat of discipline, forces Teacher Plaintiffs into a constitutionally impermissible dilemma: They must either violate their sincerely held religious beliefs or face punishment, up to and including the loss of employment. *See Ricard*, 2022 WL 1471372, at *5–9 (finding similar school-system policy likely to violate teacher's free-exercise rights).

279. In the same way, the Policy creates a religious test for public school teachers.

280. The Policy also violates Teacher Plaintiffs' free-exercise rights under the hybrid-rights doctrine, because it implicates their free-exercise rights in conjunction with another constitutional right, *i.e.*, the right to free speech as alleged in the First and Second Causes of Action. *See Emp. Div., Dep't of Hum. Res. of Or. v. Smith*, 494 U.S. 872, 881 (1990); *Yoder v. Wisconsin*, 406 U.S. 205, 233 (1972).

281. The Policy is not narrowly tailored to serve a compelling governmental interest. *See Ricard*, 2022 WL 1471372, at *8 & n.12 (rejecting Kansas school district's claimed interest in a similar policy).

282. HCPS has no compelling, substantial, rational, or legitimate interest in forcing Teacher Plaintiffs to violate their sincerely held religious beliefs, including their beliefs against using preferred pronouns that differ from a person's biological sex, and against lying to or intentionally deceiving parents.

283. Forcing Teacher Plaintiffs to violate their sincerely held religious beliefs is not the least restrictive means of achieving any governmental interest.

284. The Policy violates Teacher Plaintiffs' right to the free exercise of religion as guaranteed by the Virginia Constitution and the Virginia Code. *See* Va. Const., art. I, § 16; Va. Code § 57-1.

285. The Policy has caused, is continuing to cause, and will likely cause irreparable injury to Teacher Plaintiffs by depriving them of their constitutional and statutory right to free exercise of religion.

FOURTH CAUSE OF ACTION
Violation of Teacher Plaintiffs' Statutory Right to Exercise of Religion
(Va. Code § 57-2.02)

286. Teacher Plaintiffs repeat and reallege each of the allegations contained in paragraphs 1–285 of this Complaint.

287. Under Virginia law, “[n]o government entity shall substantially burden a person’s free exercise of religion even if the burden results from a rule of general applicability unless it demonstrates that application of the burden to the person is (i) essential to further a compelling governmental interest and (ii) the least restrictive means of furthering that compelling governmental interest.” Va. Code § 57-2.02(B).

288. Virginia law explains that “[s]ubstantially burden’ means to inhibit or curtail religiously motivated practice.” *Id.* § 57-2.02(A).

289. Teacher Plaintiffs have sincerely held religious beliefs that shape and govern their views and expression about human nature and gender identity, including sincerely held religious beliefs that prevent them from personally affirming or communicating views about human nature and gender identity that are contrary to their religious beliefs, and sincerely held religious beliefs against the use of preferred pronouns that differ from a person’s biological sex.

290. Teacher Plaintiffs’ sincerely held religious beliefs also prohibit them from lying to or intentionally deceiving parents.

291. The Policy imposes severe coercive pressure on Teacher Plaintiffs to inhibit and curtail these religiously motivated practices.

292. This coercive pressure constitutes a substantial burden on Teacher Plaintiffs' free exercise of religion.

293. HCPS has no compelling governmental interest in forcing Teacher Plaintiffs to abandon their religiously motivated practice and violate their sincerely held religious beliefs by using preferred pronouns that differ from a person's biological sex, or by lying to or intentionally deceiving parents.

294. The Policy is not the least restrictive means of furthering any compelling governmental interest; HCPS has many alternatives available to accomplish whatever legitimate objectives it may have.

295. The Policy violates and threatens to violate Teacher Plaintiffs' statutory right to the free exercise of religion. *See* Va. Code § 57-2.02.

296. The Policy has caused, is continuing to cause, and will likely cause irreparable injury to Teacher Plaintiffs by depriving them of their statutory right to free exercise of religion.

FIFTH CAUSE OF ACTION
Violation of Parent Plaintiffs' Parental Rights Under the Virginia
Constitution, Virginia Code, and Virginia Common Law
(Va. Const. art. I, § 11; Va. Code § 1-240.1)

297. Parent Plaintiffs repeat and reallege each of the allegations contained in paragraphs 1–296 of this Complaint.

298. The Virginia Constitution provides that “no person shall be deprived of his life, liberty, or property without due process of law.” Va. Const., art. I, § 11.

299. “The due process guarantees of Article I, Section 11 of the Constitution of Virginia are virtually identical to those of the United States Constitution.” *Breit*, 736 S.E.2d at 721 n.7.

300. The Supreme Court of Virginia has recognized that the due-process provisions of the Virginia Constitution protects parents' fundamental "right to make decisions concerning the care, custody, and control" of their children. *Id.* at 721.

301. The General Assembly has codified the holding of *Breit*: "A parent has a fundamental right to make decisions concerning the upbringing, education, and care of the parent's child." Va. Code § 1-240.1; see 2013 Virginia Laws Ch. 678, § 2 (S.B. 908) ("[I]t is the expressed intent of the General Assembly that this act codify the opinion of the Supreme Court of Virginia in *L.F. v. Breit*, issued on January 10, 2013, as it relates to parental rights."); 2013 Virginia Laws Ch. 668, § 2 (H.B. 1642) (same).

302. Additionally, a parent has a "common law right . . . to be free from interference in a relationship with his or her child." *Wyatt*, 725 S.E.2d at 558.

303. Parents' common-law rights and duties have long been understood to extend to matters of education. See, e.g., 1 William Blackstone, *Commentaries* *434, 440.

304. Indeed, this right is "perhaps the oldest of the fundamental liberty interests recognized by [the United States Supreme] Court." *Troxel*, 530 U.S. at 65 (plurality op.).

305. This fundamental right "without doubt" includes parents' right to "establish a home and bring up children" and "to control the education of their own." *Meyer v. Nebraska*, 262 U.S. 390, 399, 401 (1923); accord *Pierce v. Soc'y of Sisters of Holy Names of Jesus & Mary*, 268 U.S. 510, 534–35 (1925).

306. Parents' fundamental right to the care, custody, and control of their children also includes a right to guide their children through difficult and potentially life-altering decisions. See *H.L. v. Matheson*, 450 U.S. 398, 410 (1981) (describing the "important 'guiding role'" that parents "play in the upbringing of their children," a role that "presumptively includes counseling them on important decisions").

307. Governmental action “that seeks to interfere with a parent’s fundamental rights survives constitutional scrutiny only if it is narrowly tailored to serve a compelling state interest.” *Breit*, 736 S.E.2d at 721.

308. The Policy requires, among other things, that all HCPS employees, upon a student’s request, immediately begin socially transitioning that student by referring to the student with a preferred name and pronouns that differ from the student’s biological sex, and it forbids HCPS employees from notifying or seeking the consent of the student’s parents.

309. The Policy also requires all HCPS employees to lie to parents about a student’s social transition unless that student allows HCPS to tell the truth to the parents.

310. The Policy directly and substantially interferes and threatens to interfere with Parent Plaintiffs’ fundamental rights.

311. First, it directly and substantially interferes with Parent Plaintiffs’ fundamental parental right and responsibility to make medical and mental health decisions for their children.

312. Because Parent Plaintiffs have primary responsibility for making such decisions, HCPS must not provide or facilitate any treatment or intervention having significant medical or mental health ramifications without first obtaining parental consent.

313. The decision to facilitate, encourage, and affirm a childhood “social transition” is a major, controversial, and potentially life-altering decision with significant medical and mental health ramifications.

314. Like any other such decision, Parent Plaintiffs have a fundamental right to make and participate in that decision. *See Parham v. J.R.*, 442 U.S. 584, 604 (1979).

315. Yet through the Policy, HCPS has usurped Parent Plaintiffs’ rights and responsibilities in this area and has arrogated these rights and responsibilities to itself.

316. Second, the Policy directly and substantially interferes with Parent Plaintiffs' fundamental right and responsibility to provide their children with advice and guidance on important decisions.

317. HCPS has forbidden employees from communicating with Parent Plaintiffs about these issues unless their children consent, and they have further instructed employees to deceive Parent Plaintiffs about what whether their children have socially transitioned.

318. Through the Policy's concealment and deceit, HCPS has actively undertaken to keep Parent Plaintiffs unaware of the steps HCPS is taking to facilitate and encourage a "social transition" that HCPS has decided to pursue for any child.

319. Such active concealment and deceit directly and substantially prevents Parent Plaintiffs from offering their children necessary advice and counsel on a potentially life-altering decision.

320. Third, by usurping Parent Plaintiffs' rights and responsibilities and implementing the Policy of concealment and deceit, Defendants have impermissibly "inject[ed themselves] into the private realm of the family." *Troxel*, 530 U.S. at 68 (plurality op.).

321. "Family relationships, by their nature, involve deep attachments and commitments to the necessarily few other individuals with whom one shares not only a special community of thoughts, experiences, and beliefs but also distinctively personal aspects of one's life." *Roberts v. U.S. Jaycees*, 468 U.S. 609, 619–20 (1984).

322. A child's discomfort with his or her gender, and any resulting actions to address that discomfort, will impact both the child and the child's family.

323. No uniform approach of affirmation upon demand without parental involvement can adequately address those concerns.

324. Instead, the decision about how to best address those issues will vary on a case-by-case basis, informed by the unique and variegated history and characteristics of each child.

325. That decision belongs, by definition, in “the private realm of the family.” *Troxel*, 530 U.S. at 68 (plurality op.).

326. Yet HCPS has arrogated this decision to itself, all the while actively excluding and deceiving parents.

327. Moreover, the Policy prompts students to consider whether their parents are sufficiently “supportive” to be involved in the process of “social transition,” which—especially when followed by active exclusion, concealment, and deceit—sows seeds of doubt in children’s minds about whether their parents can be trusted and whether they have their children’s best interests in mind, thereby creating a rift in the parent–child relationship.

328. HCPS has no legitimate—much less compelling—governmental interest in usurping Parent Plaintiffs’ rights and responsibilities in this area while deceiving them by concealing HCPS’s activities. *See Ricard*, 2022 WL 1471372, at *8 (“It is difficult to envision why a school would even claim—much less how a school could establish—a generalized interest in withholding or concealing from the parents of minor children, information fundamental to a child’s identity, personhood, and mental and emotional well-being such as their preferred name and pronouns.”).

329. Nor are HCPS’s actions narrowly tailored to serve any compelling governmental interest.

330. The Policy violates Parent Plaintiffs’ natural, fundamental, and common-law right to direct the upbringing, education, and care of their children as guaranteed by the Virginia Constitution, the Virginia Code, and the common law. *See Va. Const. art. I, § 11; Va. Code § 1-240.1; Breit*, 736 S.E.2d at 721.

331. The Policy has caused, is continuing to cause, and will likely cause irreparable injury to Parent Plaintiffs by depriving them of their constitutional, statutory, and common-law right to direct the upbringing, education, and care of their children.

SIXTH CAUSE OF ACTION

Violation of Parent Plaintiffs' Right to Free Exercise of Religion Under the Virginia Constitution and the Act for Religious Freedom (Va. Const., art. I, § 16; Va. Code § 57-1)

332. Parent Plaintiffs repeat and reallege each of the allegations contained in paragraphs 1–331 of this Complaint.

333. The Virginia Constitution provides that “all men are equally entitled to the free exercise of religion, according to the dictates of conscience.” Va. Const., art. I, § 16.

334. The Virginia Code similarly provides that no one shall “suffer on account of his religious opinions or belief; but that all men shall be free to profess, and by argument to maintain, their opinions in matters of religion, and that the same shall in no wise diminish, enlarge or affect their civil capacities.” Va. Code § 57-1; *see* Va. Const. art. I, § 16 (containing substantially similar language).

335. Parent Plaintiffs' free-exercise rights include the right to raise their children in accordance with their faith. *See, e.g., Espinoza v. Mont. Dep't of Revenue*, 140 S. Ct. 2246, 2261 (2020); *Smith*, 494 U.S. at 881–82; *Yoder*, 406 U.S. at 213–14; *Pierce*, 268 U.S. at 518.

336. As explained above, Parent Plaintiffs are professing Christians who seek to live out their faith in and through their parenting.

337. Accordingly, if Parent Plaintiffs' children ever experience discomfort with their biological sex, Parent Plaintiffs would not “affirm” whatever beliefs or feelings their children might have about their sex.

338. Instead, Parent Plaintiffs would support, comfort, love, and encourage their children through and with the assistance of their faith, according to their sincerely held religious beliefs about sex and gender and their beliefs about parenting.

339. Parent Plaintiffs' compliance with those religious beliefs constitutes a religious exercise. *See* Va. Const. art. I, § 16.

340. The Policy substantially burdens Parent Plaintiffs' free-exercise rights by usurping their role as parents and by deceiving them.

341. Specifically, the Policy—particularly its active concealment and deceit—directly and substantially interferes with Parent Plaintiffs' right to choose a treatment or intervention approach for their children that, consistent with their religious beliefs, does not involve social transition.

342. The Policy also directly and substantially interferes with Parent Plaintiffs' right to provide faith-based advice and guidance to their children on a significant and potentially life-altering decision.

343. The Policy discriminates against Parent Plaintiffs on the basis of their religious beliefs and demonstrates hostility towards them because of those religious beliefs. Specifically, HCPS will exclude, conceal from, and deceive Parent Plaintiffs because they hold certain religious beliefs; whereas they will not do the same to those who hold other religious beliefs deemed sufficiently “supportive.”

344. The Policy also inhibits the dissemination of particular religious beliefs to Parent Plaintiffs' children because HCPS has undertaken to deceive and conceal information from Parent Plaintiffs. Indeed, the whole point of deceiving and concealing information from parents is to prevent them from communicating to their children information, viewpoints, and beliefs HCPS disfavors.

345. The Policy also violates Parent Plaintiffs' right to the free exercise of religion by conditioning their right to a public education on their willingness to forgo their free-exercise right to raise their children in accordance with their faith. *See, e.g.,*

Sherbert v. Verner, 374 U.S. 398, 404 (1963) (finding a substantial burden when an individual is required to “choose between following the precepts of her religion and forfeiting benefits, on the one hand, and abandoning one of the precepts of her religion . . . on the other hand”).

346. The Policy also violates Parent Plaintiffs’ free-exercise rights under the hybrid-rights doctrine, because it implicates their free-exercise rights in conjunction with their fundamental right to direct the upbringing, education, and care of their children, as alleged in the Fifth Cause of Action. *See Smith*, 494 U.S. at 881–82; *Yoder*, 406 U.S. at 233.

347. HCPS has no legitimate—much less compelling—governmental interest in usurping Parent Plaintiffs’ rights and responsibilities in this area while deceiving parents and concealing their children’s activities.

348. Nor are HCPS’s actions narrowly tailored to serve any compelling governmental interest.

349. The Policy violates Parent Plaintiffs’ right to the free exercise of religion. *See Va. Const. art. I, § 16; Va. Code § 57-1.*

350. The Policy has caused, is continuing to cause, and will likely cause irreparable injury to Parent Plaintiffs by depriving them of their constitutional and statutory right to the free exercise of religion.

SEVENTH CAUSE OF ACTION
Violation of Parent Plaintiffs’ Statutory Right to Exercise of Religion
(Va. Code § 57-2.02)

351. Parent Plaintiffs repeat and reallege each of the allegations contained in paragraphs 1–350 of this Complaint.

352. Under Virginia law, “[n]o government entity shall substantially burden a person’s free exercise of religion even if the burden results from a rule of general applicability unless it demonstrates that application of the burden to the person is

(i) essential to further a compelling governmental interest and (ii) the least restrictive means of furthering that compelling governmental interest.” Va. Code § 57-2.02(B).

353. Virginia law explains that “[s]ubstantially burden’ means to inhibit or curtail religiously motivated practice.” *Id.* § 57-2.02(A).

354. Parent Plaintiffs’ free-exercise rights include the right to raise their children in accordance with their faith. *See, e.g., Espinoza*, 140 S. Ct. at 2261; *Smith*, 494 U.S. at 881–82; *Yoder*, 406 U.S. at 213–14; *Pierce*, 268 U.S. at 518.

355. As noted above, Parent Plaintiffs have sincerely held religious beliefs that shape and govern their approach to parenting, as well as their views about human nature and gender identity.

356. Parent Plaintiffs conduct themselves in accordance with these beliefs, and this conduct is “exercise of religion” and “religiously motivated practice” protected by statute. *See* Va. Code § 57-2.02.

357. As alleged above, the Policy inhibits and curtails these religiously motivated practices.

358. The Policy therefore constitutes, and threatens to constitute, a substantial burden on Parent Plaintiffs’ free exercise of religion.

359. HCPS has no legitimate—much less compelling—governmental interest in usurping Parent Plaintiffs’ rights and responsibilities in this area while deceiving parents and concealing their children’s activities.

360. Nor are HCPS’s actions narrowly tailored to serve any compelling governmental interest.

361. The Policy violates and threatens to violate Parent Plaintiffs’ statutory right to the free exercise of religion. *See* Va. Code § 57-2.02.

362. The Policy has caused, is continuing to cause, and will likely cause irreparable injury to Parent Plaintiffs by depriving them of their statutory right to free exercise of religion.

PRAYER FOR RELIEF

Plaintiffs respectfully request that this Court enter judgment against Defendants and provide Plaintiffs the following relief:

- A. A judgment declaring that HCPS's Policy violates Teacher Plaintiffs' constitutional and statutory rights to the extent that it:
- (1) conditions Teacher Plaintiffs' employment (or the conditions thereof) on Teacher Plaintiffs personally affirming a particular viewpoint about gender identity;
 - (2) compels Teacher Plaintiffs to personally affirm and communicate messages about gender identity—including through the use of preferred pronouns that differ from students' biological sex—with which they disagree;
 - (3) compels Teacher Plaintiffs to hide information from, lie to, or deceive parents, particularly when the hidden information pertains to critical mental-health issues; and,
 - (4) prohibits Teacher Plaintiffs from expressing certain views regarding gender identity, or punishes them for expressing those views, including though the use or nonuse of preferred pronouns;
- B. A judgment declaring that HCPS's Policy violates Parent Plaintiffs' constitutional, statutory, and common-law rights to the extent that it:
- (1) authorizes HCPS to provide, facilitate, encourage, or affirm the “social transition” of any of Parent Plaintiffs' children without first obtaining parental consent;
 - (2) prohibits teachers and other staff from communicating with Parent Plaintiffs about issues their children may be experiencing relative to sex, gender, or gender identity, including, but not limited to, any desired change in name or pronouns; and,

- (3) instructs or permits teachers and other staff to deceive Parent Plaintiffs by, among other things, using different names and pronouns with Parent Plaintiffs than those used at school;
- C. A temporary and permanent injunction enjoining and restraining Defendants and their agents, officers, and employees from implementing the Policy that violates the declaratory judgment requested in Sections A.1-A.4, above;
- D. A temporary and permanent injunction:
 - (1) enjoining and restraining Defendants and their agents, officers, and employees from engaging in the Policy that violates the declaratory judgment requested in Sections B.1-B.3, above; or in the alternative,
 - (2) permitting Parent Plaintiffs to opt their children out of Defendants' Policy;
- E. Nominal damages for the violation of Plaintiffs' constitutional, statutory, and common-law rights;
- F. Plaintiffs' reasonable attorneys' fees, costs, and other costs and disbursements in this action; and,
- G. All other further relief to which Plaintiffs may be entitled.

D [REDACTED] F [REDACTED]
 K [REDACTED] M [REDACTED]
 T [REDACTED] and L [REDACTED] N [REDACTED] and
 J [REDACTED] and N [REDACTED] S [REDACTED]

PLAINTIFFS
By Counsel

Respectfully submitted this 1st day of June, 2022.



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*Motions to appear *pro hac vice* contemporaneously filed with this Complaint