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October 26, 2022

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

**Re: Equality Virginia's Comment Opposing the Proposed 2022 Model Policies on the Privacy, Dignity, and Respect for All Students in Virginia's Public Schools**

Dear Superintendent Balow,

I am writing on behalf of Equality Virginia (EV), the leading advocacy organization in Virginia seeking equality for lesbian, gay, bisexual, transgender, and queer people (LGBTQ+). EV strongly opposes the Virginia Department of Education's (VDOE) proposed 2022 model policies on the Privacy, Dignity, and Respect for All Students in Virginia's Public Schools (Model Policies), and urges you to rescind them immediately.

EV believes schools should be places of liberation where every student can thrive and reach their full potential. LGBTQ+ students disproportionately experience school climates that are hostile to their overall well-being and educational attainment. This is especially true for LGBTQ+ students who are Black, Indigenous, people of color (BIPOC), transgender, non-binary, and students with disabilities. A hostile school climate, much like the one the proposed model policies would create, will affect transgender and non-binary students' academic success and mental health.

All students in Virginia deserve a K-12 education system that allows them to learn and grow free from harm and transgender and non-binary students must be afforded the equal opportunity to learn in a safe and affirming school environment. The model policies do not provide transgender and non-binary students this opportunity and would instead create learning environments that are unsafe, hostile and dangerous.

The mere proposal of anti-transgender policies, like the model policies, has devastating effects on the mental health and well-being of transgender and non-binary youth with 94% of LGBTQ youth reported that recent politics negatively impacted their mental health.



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## **The model policies would create a hostile school climate for transgender and non-binary students**

The model policies will put transgender and non-binary students at risk for harm and discrimination, both at home and in school, by restricting restroom access for transgender and nonbinary students, requiring students to jump through legal hoops just to be referred to by their affirming pronouns, and require faculty and staff to “out” trans and non-binary students to their parents. A 2021 peer-reviewed study by The Trevor Project and published in the American Journal of Community Psychology, found that greater experiences of minority stress experiences are associated with increased odds of attempting suicide. LGBTQ+ youth who reported experiencing four types of minority stress — LGBTQ+-based physical harm, discrimination, housing instability, and change attempts by parents — were 12 times at greater odds of attempting suicide compared to youth who experienced none.<sup>1</sup>

The model policies would only serve to exacerbate these stressors. It is imperative that the VDOE develop policies that *reduce* stressors for all students but especially transgender and non-binary students.

### **Rejection and a Lack of Social Support & Affirming Spaces**

The model policies would require faculty and staff to forcibly “out” trans and non-binary students to their parents. According to the model policies, “schools may not encourage or instruct teachers to conceal information about a student from their parents.” This policy would force teachers into the impossible position of risking their job or the safety and well-being of their students. Moreover, forcibly outing students without their knowledge or consent in any circumstance will only result in eroding trust between student and teachers – trust that has proven to foster a supportive educational environment for all students, including transgender and non-binary students. For example, LGBTQ+ youth who report the presence of trusted adults, like teachers, in their school have higher levels of self-esteem and access to supportive peers is protective against anxiety and depression, including among those who lack support from their family.<sup>2</sup>

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<sup>1</sup> Green, A. E., Price, M. N., & Dorison, S. H. (2021). Cumulative minority stress and suicide risk among LGBTQ youth. *American Journal of Community Psychology*, 1–12.

<sup>2</sup> Dessel, A. B., Kulick, A., Wernick, L. J., & Sullivan, D. (2017). The importance of teacher support: Differential impacts by gender and sexuality. *Journal of Adolescence*, 56, 136-144. Parra, L. A., Bell, T. S., Benibgui, M., Helm, J. L., & Hastings, P. D. (2018). The buffering effect of peer support on the links between family rejection and psychosocial adjustment in LGB emerging adults. *Journal of Social and Personal Relationships*, 35(6), 854-871.



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Transgender and non-binary youth deserve to have families that love and support them, but unfortunately that is not always the case. Some transgender and non-binary youth will face rejection, abuse or worse if they are forcibly outed, like the 2022 proposed model policy aims to do, to unsupportive families. Research suggests that among LGBTQ+ youth, only one-third experience parental acceptance, with an additional one-third experiencing parental rejection, and the final one-third not disclosing their LGBTQ identity until they are adults.<sup>3</sup> Fewer than 1 in 3 transgender and nonbinary youth found their home to be gender-affirming and a little more than half (51%) found their school to be affirming.

We know that transgender and non-binary youth deserve to be accepted with open arms, care, and love. They also deserve the space and time to come out to trusted adults at a pace that makes sense to them. Coming out is an incredibly personal decision and should be completely up to a student and their relationship with who they might share it with. Forcible outing could place students in situations where they feel unsafe and force them to make alternative plans for housing, food, financial support, and/or transportation. The safety and well-being of transgender and non-binary students should be VDOE's utmost priority.

### **Prohibits Supporting Transgender & Non-Binary Youth**

The model policies would require transgender and non-binary students utilize an unnecessary process to be referred to by their affirming name and pronouns. Even if students follow the proposed process, the model policies still allow teachers to misgender and deadname these students.

According to the proposed policy, “school personnel shall refer to each student using only the name in the official record or a related common nickname”, “school personnel shall refer to each student using only the pronouns indicated by the student’s sex in the official record”, with the exception that “school personnel shall use a name or pronouns that differ from those in the official record only if a parent or emancipated minor instructs the school in writing that another name or pronouns be used because of the student’s persistent and sincere belief that their gender differs from their sex.” This exception would require parents of transgender or non-binary students to document in writing that their child’s gender differs from their sex assigned at birth, a requirement that threatens the health and safety of some students and can create harmful circumstances for transgender and non-binary students whose parents are not supportive.

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<sup>3</sup> Katz-Wise, S. L., Rosario, M., & Tsappis, M. (2016). Lesbian, gay, bisexual, and transgender youth and family acceptance. *Pediatric Clinics of North America*, 63(6), 1011-1025.



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In a [poll](#) conducted by Morning Consult on behalf of The Trevor Project, when asked about proposed legislation that would require schools to tell a student's parent or guardian if they request to use a different name/pronoun or if they identify as LGBTQ at school, 45% of LGBTQ youth said it made them feel angry, 34% felt nervous, and nearly 1 in 3 felt stressed.

Affirming transgender and nonbinary youth by respecting their pronouns and allowing them to change legal documents is associated with lower rates of attempting suicide. Transgender and nonbinary youth who reported having pronouns respected by all of the people they lived with attempted suicide at half the rate of those who did not have their pronouns respected by anyone with whom they lived.

Misgendering and deadnaming in school is a major fear and concern for transgender and nonbinary students. All students have the right to be addressed by a name, pronouns, and other terms that correspond to their gender identity. This foundational respect should not rely on whether a student has access to a legal name change or gender marker change on official documents. Educators, staff, and peers, should always use the pronoun and name with which a student identifies or requests.

### **Negative Impact on School Climate**

Per GLSEN's 2021 National School Climate Survey, a staggering 74.2% of transgender students reported feeling unsafe at school based on their gender (additionally 64% of trans youth felt unsafe based on their gender expression, and 49% felt unsafe based on their sexual orientation), 72.9% of transgender students avoided bathrooms at school, 58.6% avoided locker rooms, and 51.2% avoided gym/PE class, 38.3% missed school for safety reasons (relatedly 19.7% changed schools for safety reasons), 53.4% of transgender youth reported being prevented from using their chosen name and pronouns.

Transgender students who face these sorts of victimization are then three times more likely to have missed school in the past month than their peers. Of the LGBTQ+ students who indicated that they were considering dropping out of school, half (51.5%) indicated that they were doing so because of a hostile school climate, including issues with harassment, unsupportive peers or educators, and gendered school policies/practices.

The academic achievement of transgender and nonbinary youth quite literally depends on access to affirming spaces. Since most youth under age 18 spend the majority of their time in school, it is imperative that these environments are supportive of their identities and responsive to their needs. Access to a quality education is impossible if we do not first ensure that the safety and



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humanity of all students is valued and preserved. As long as students are unsafe, fearful, and uncomfortable in their school environment, they cannot focus on learning or sometimes even be physically present. This demonstrates the immediate harm the model policies will inflict on transgender and non-binary students, and the urgent need to rescind them.

### **The model policies violate Virginia Code § 22.1-23.3**

The intent of the law and the Virginia Code requires and authorizes VDOE to develop model policies for elementary and secondary schools on how to address common issues involving transgender and nonbinary students, using evidence-based information and best practices.<sup>4</sup> Delegate Marcus Simon, one of the law’s sponsors, stated that the purpose of the legislation is to “ensure the safety and dignity of all students in Virginia, regardless of how they identify or where they live.”<sup>5</sup> Instead, the VDOE has proposed model policies that directly conflict with the intent and purpose of the law, are not evidence-based, are not informed by or involved transgender and non-binary students, and promote unfair and dangerous treatment of transgender and non-binary students. EV has serious concerns with the legality of such conflict and inconsistencies with what the law requires as well as the administration seeking to legislate policy through an executive agency.

The 2022 Model Policies will not create a learning environment that is safe for all students. Instead, they will result in school policies that strip transgender students of the same opportunities afforded to their cisgender peers.

### **The model policies ignore or violate existing state and federal law.**

EV echoes, supports and endorses public comment submitted by other organizations challenging the legal standing of the 2022 proposed model policy:<sup>6</sup>

- [American Civil Liberties Union of Virginia](#)
- [Americans United for Separation of Church and State](#)

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<sup>4</sup> Va. Code § 22.1-23.3.

<sup>5</sup> Press Release, Office of The Governor, Governor Northam Signs 49 Bills into Law (Mar. 5, 2020), <https://www.governor.virginia.gov/newsroom/all-releases/2020/march/headline853059-en.html>

<sup>6</sup> Pursuant to Virginia Code § 2.2-4002.1(C): “[i]f a written comment is received during a public comment period asserting that the guidance document is contrary to state law or regulation, . . . the effective date of the guidance document by the agency shall be delayed for an additional 30-day period.”



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## **Conclusion**

On this basis, EV vehemently opposes the proposed 2022 Model Policies on the Privacy, Dignity, and Respect for All Students in Virginia's Public Schools. We urge the VDOE to rescind them.

We will continue to work with community members, local and state organizations to create a Virginia that welcomes, includes and provides safety for transgender and non-binary students.

Please reach out to Narissa Rahaman (she/her), Executive Director, at nrahaman@equalityvirginia.org to discuss our public comment.

Sincerely,

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Equality Virginia