



SUBMITTED VIA EMAIL (policy@doe.virginia.gov) AND ELECTRONICALLY VIA VIRGINIA REGULATORY TOWN HALL

October 5, 2022

Jillian Balow
Superintendent of Public Instruction
Office of the Superintendent
PO Box 2120
Richmond, VA 23218

RE: Comments to the Proposed Guidance Document Titled “2022 Model Policies On The Privacy, Dignity, And Respect For All Students And Parents In Virginia’s Public Schools”

Dear Superintendent Balow:

By way of introduction, the Parental Rights Foundation is a nationwide organization dedicated to protecting children by empowering parents. The Parental Rights Foundation was founded in 2014 to advance, defend, and protect the rights of parents to direct the education, upbringing, nurture, and care of their children. We write to you today on behalf of our organization, as well as on behalf of all Virginia parents, grandparents, and supporters of the traditional right of parents to direct the education and upbringing of their children.

We write today in strong support of the Virginia Department of Education’s recent publication of the Model Policy titled “2022 Model Policies On The Privacy, Dignity, And Respect For All Students And Parents In Virginia’s Public Schools,” and the Virginia Department of Education’s withdrawal of the 2021 Model Policy titled “Model Policies for the Treatment of Transgender Students in Virginia’s Public Schools.”

The 2021 Model Policy promulgated by Governor Ralph Northam’s administration had numerous flaws. Most notably, there was not a single reference to Virginia’s fundamental parental rights statute, codified at Va. Code Ann. § 1-240.1. There was no reference to the nearly 100 years of U.S. Supreme Court precedent that parental rights are a fundamental right. By not even addressing such critical legal issues, the 2021 Model Policy created confusion in Virginia’s public schools.

William A. Estrada, Esq., President • **James R. Mason, Esq.**, Chairman of the Board

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Indeed, attached to this letter is a letter our organization recently sent to Fairfax County Public Schools. Our letter is but one example of the concerns raised by parents across the Commonwealth of Virginia over the last couple of years that Virginia school districts are ignoring parental rights when it comes to their minor children.

By contrast, the new Model Policy that the Virginia Department of Education just released, and for which you are soliciting comments, recognizes that parental rights are fundamental. It recognizes that all of Virginia's laws, including Va. Code Ann. § 1-240.1 (which our parent organization, ParentalRights.org, was instrumental in drafting, introducing, and passing into law in 2013), must be respected by Virginia's school districts.

Additionally, the new Model Policy that the Virginia Department of Education just released reflects the U.S. Supreme Court's long-standing precedents that parental rights are a fundamental right.

In *Pierce v. Society of Sisters*, 268 U.S. 510 (1925) the Court said “[u]nder the doctrine of *Meyer v. Nebraska*, 262 U.S. 390, we think it entirely plain that the Act of 1922 unreasonably interferes with the liberty of parents and guardians to direct the upbringing and education of children under their control. As often heretofore pointed out, rights guaranteed by the Constitution may not be abridged by legislation which has no reasonable relation to some purpose within the competency of the State. The fundamental theory of liberty upon which all governments in this Union repose excludes any general power of the State to standardize its children by forcing them to accept instruction from public teachers only. The child is not the mere creature of the State; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations.” *Id.* at 534.

In *Wisconsin v. Yoder*, 406 U.S. 205 (1972) the Court said “the history and culture of Western civilization reflect a strong tradition of parental concern for the nurture and upbringing of their children. This primary role of the parents in the upbringing of their children is now established beyond debate as an enduring American tradition.” *Id.* at 232.

In *Cleveland Board of Education v. LaFleur*, 414 U.S. 632 (1974), the Court said “[t]his Court has long recognized that freedom of personal choice in matters of . . . family life is one of the liberties protected by the Due Process Clause of the Fourteenth Amendment.” *Id.* at 639.

In *Parham v. J.R.*, 442 U.S. 584 (1979) the Court said “[o]ur jurisprudence historically has reflected Western civilization concepts of the family as a unit with broad parental authority over minor children. Our cases have consistently followed that course; our constitutional system long ago rejected any notion that a child is ‘the mere creature of the State’ and, on the contrary, asserted that parents generally have the right, coupled with the high duty, to recognize and prepare their children for additional obligations. Surely, this includes a high duty to recognize symptoms of illness and to seek and follow medical advice. The law’s concept of the family rests on a presumption that parents possess what a child lacks in maturity, experience, and capacity for judgment required for making life's difficult decisions. More important, historically it has

recognized that natural bonds of affection lead parents to act in the best interests of their children.” *Id.* at 602 (*cleaned up*).

In *Santosky v. Kramer*, 455 U.S. 745 (1982) the Court said “freedom of personal choice in matters of family life is a fundamental liberty interest protected by the Fourteenth Amendment.” *Id.* at 753.

And most recently, in *Troxel v. Granville*, 530 U.S. 57 (2000) the Court said “[t]he liberty interest at issue in this case -- the interest of parents in the care, custody, and control of their children -- is perhaps the oldest of the fundamental liberty interests recognized by this Court.” *Id.* at 65.

Virginia’s Supreme Court has also held that parental rights are fundamental, declaring in *L.F. v. Breit*, 736 S.E.2d 711 (Va. 2013) that “[t]he relationship between a parent and child is a constitutionally protected liberty interest under the Due Process Clause of the Fourteenth Amendment. Indeed, the Supreme Court of the United States has characterized a parent's right to raise his or her child as perhaps the oldest of the fundamental liberty interests recognized by this Court. Any statute 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.” *Id.* at 721 (*internal citations and quotations omitted*).

As a national organization based in Virginia that works to ensure that parental rights are respected, we strongly support the “2022 Model Policies On The Privacy, Dignity, And Respect For All Students And Parents In Virginia’s Public Schools.”

Thank you for standing with Virginia’s parents and children. Thank you for respecting Virginia’s laws and the constitutional guarantees of parental rights established by the Constitutions of the Commonwealth of Virginia and the United States. And thank you for recognizing that the best way to protect children is by empowering parents.

Sincerely,

A handwritten signature in black ink, appearing to read 'William A. Estrada', with a large, sweeping flourish at the end.

William A. Estrada, Esq.*
President
Parental Rights Foundation

** Licensed in the District of Columbia*

Cc: The Honorable Glenn Youngkin, Governor
The Honorable Winsome Sears, Lieutenant Governor
The Honorable Jason Miyares, Attorney General
The Honorable Aimee Rogstad Guidera, Secretary of Education

ATTACHMENT



VIA U.S. MAIL

July 14, 2022

Dr. Michelle C. Reid
Superintendent
Fairfax County Public Schools
Gatehouse Administration Center
8115 Gatehouse Road
Falls Church, VA 22042

RE: Fairfax County Public Schools' Compliance with Virginia Law

Dear Superintendent Reid:

Recent news reports have raised questions about whether Fairfax County Public Schools is following Virginia law. Specifically, Va. Code Ann. § 1-240.1. Rights of parents, states "A parent has a fundamental right to make decisions concerning the upbringing, education, and care of the parent's child."

As reported by the *Washington Free Beacon* on July 5, 2022, "Fairfax County Public Schools is instructing teachers and administrators to forgo parents' permission when a student requests to use a bathroom or locker room associated with his or her so-called gender identity, according to screenshots of a mandatory faculty training module obtained by the *Washington Free Beacon*."¹

Additionally, recently enacted Fairfax County Public Schools Regulation 2603.2, which became effective on April 21, 2022, does not appear to reflect Virginia's codification of parental rights in Va. Code Ann. § 1-240.1. Specifically, Paragraph IV.A. of Regulation 2603.2 states "[t]he support team shall be a multidisciplinary team that may consist of the student, parents ***if the student is willing***, ..." (*emphasis added*).² Furthermore, while Regulation 2603.2 cites several pertinent federal laws and Virginia statutes and regulations under "Legal References," it neglects

¹ Josh Christensen, *Virginia School District Prohibits Teachers From Contacting Parents When Students Change Gender*, *Washington Free Beacon* (July 5, 2022, 4:25 PM), <https://freebeacon.com/campus/virginia-school-district-prohibits-teachers-from-contacting-parents-when-students-change-gender/>.

² Fairfax County Public Schools, Regulation 2603.2, [https://go.boarddocs.com/vsba/fairfax/Board.nsf/files/CDPTV8792B2E/\\$file/R2603.pdf](https://go.boarddocs.com/vsba/fairfax/Board.nsf/files/CDPTV8792B2E/$file/R2603.pdf).

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to cite Va. Code Ann. § 1-240.1, raising questions about whether Regulation 2603.2 is in full compliance with Virginia law.

Our parent organization, ParentalRights.org, was instrumental in the drafting, introduction, and passage into law of Va. Code Ann. § 1-240.1. As a national organization based in Virginia that works to ensure that parental rights are respected, I ask that you look into the two matters raised in this letter to ensure that Fairfax County Public Schools is in compliance with Va. Code Ann. § 1-240.1.

Sincerely,

A handwritten signature in black ink, appearing to read 'Will Estrada', with a large, sweeping flourish at the end.

Will Estrada
President
Parental Rights Foundation

Cc: The Honorable Glenn Youngkin, Governor
The Honorable Winsome Sears, Lieutenant Governor
The Honorable Jason Miyares, Attorney General
The Honorable Aimee Rogstad Guidera, Secretary of Education
The Honorable Stella Pekarsky, Chair, Fairfax County School Board