



WISCONSIN INSTITUTE FOR LAW & LIBERTY, INC.
330 E. Kilbourn Avenue, Suite 725, Milwaukee, WI 53202-3141
414-727-WILL (9455)
Fax 414-727-6385
www.will-law.org

**2022 Model Policies on The Privacy, Dignity, And Respect for
All Students and Parents in Virginia’s Public Schools**

Support for Publication of Proposed Model Policy

To Whom it May Concern:

The Wisconsin Institute for Law & Liberty (WILL) is a non-profit public-interest law and policy organization dedicated to the rule of law, individual liberty, constitutional government, and a robust civil society. We are writing in 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 previous Model Policy lacked any reference whatsoever to the nearly 100 years of U.S. Supreme Court precedent that parental rights are a fundamental right, and it also failed to reference Virginia’s fundamental parental rights statute, codified at Va. Code Ann. § 1-240.1 (“A parent has a fundamental right to make decisions concerning the upbringing, education, and care of the parent’s child.”)

All parents have the right to direct the upbringing of their children, including their education. The new Model Policy recognizes that parental rights are fundamental and reflects U.S. Supreme Court precedent. *See Pierce v. Society of Sisters*, 268 U.S. 510 (1925) (recognizing the right of parents “to direct the upbringing and education of children under their control” and that “[t]he child is not the mere creature of the State”); *Wisconsin v. Yoder*, 406 U.S. 205 (1972) (holding that “the history and culture of Western civilization reflect a strong tradition of parental concern for the nurture and upbringing of their children” and that the “primary role of the parents in the upbringing of their children is now established beyond debate as an enduring American tradition”); *Cleveland Board of Education v. LaFleur*, 414 U.S. 632 (1974) (recognizing 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”); *Parham v. J.R.*, 442 U.S. 584 (1979) (recognizing “the family as a unit with broad parental authority over minor children” and that “parents possess what a child lacks in maturity, experience, and capacity for judgment required for making life's difficult decisions”); *Santosky v. Kramer*, 455 U.S. 745 (1982) (holding that “freedom of

personal choice in matters of family life is a fundamental liberty interest protected by the Fourteenth Amendment”); *Troxel v. Granville*, 530 U.S. 57 (2000) (holding that “[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.”).

WILL has been litigating harmful policies in school districts across Wisconsin. Policies such as the “2022 Model Policies on The Privacy, Dignity, And Respect for All Students and Parents in Virginia’s Public Schools” protect parents’ rights where many policies in Wisconsin do not. One of our clients experienced the impact firsthand, when her child’s school wanted to affirm her daughter’s interest in transitioning without the parent’s consent. But our client, after researching issues related to gender dysphoria and realizing her daughter did not meet the medical definition of that disorder, asked the school to refer to her child by her biological sex and corresponding pronouns while arranging for supportive mental health care for the child. The district refused and the parent removed her child. With medical assistance and family support, our client’s daughter eventually decided that she did not want to transition.

Research shows that students are impacted by people of authority in their life, including their teachers and school administrations. Allowing these “individuals of authority” to affirm a child’s gender identity, without input from medical professionals and their parents, creates a greater risk of harm to that child. The proposed Virginia Model Policies contribute to protecting against that risk. School administrators and teachers are not trained medical professionals and cannot assess a child’s mental state or medical needs, and they cannot determine the best way to serve students with gender dysphoria.

As an organization that works to ensure that parental rights are respected, WILL strongly supports the new Model Policies.

Sincerely,

WISCONSIN INSTITUTE FOR LAW & LIBERTY, INC.



Cory J. Brewer
Associate Counsel
cbrewer@will-law.org