

## Virginia Gender Policy Comment

The Foundation Against Intolerance & Racism (FAIR) is a nonpartisan, nonprofit organization dedicated to advancing civil rights and liberties for all Americans, and promoting a common culture based on fairness, understanding, and humanity. We submit this comment in support of the Virginia Department of Education's (VDOE) [2022 Model Policies on the Privacy, Dignity, and Respect for All Students and Parents in Virginia's Public Schools](#). The model policy, which provides guidance to Virginia public schools on handling gender nonconforming students, should be an example to other states that are attempting to balance the interests of students, parents, and school officials in a way that will create an inclusive school environment for everyone.

The model policy's primary guiding principle is to ensure that parents have control over "decisions with respect to their children." Specifically, it upholds the rights of parents under the Fourteenth Amendment by allowing them to take the lead in working with their school to determine the appropriate response to a student's expressed gender nonconformity. This is significant, as [many schools across](#) the country have adopted policies directing or encouraging schools to actively withhold from parents any information indicating their child may have gender dysphoria or is in the gender transition process.<sup>123</sup> Schools should work with parents in ensuring the healthy development of gender nonconforming students. When they conceal gender transition information from parents, it not only violates those parents' rights under the Fourteenth Amendment, but also denies gender dysphoric students access to the most important resource they have to help them navigate the complexities inherent in gender transition: their parents.

The model policy also protects the First Amendment rights of teachers and students by prohibiting schools from mandating that they adhere to the ideological belief that gender identity is subjectively determined. As the model policy correctly notes, many Virginians (and Americans) do not hold that belief, and many of them strongly oppose it being taught

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<sup>1</sup> Reese, Reagan. "California School District Promoted 'Guidebook' To Help Teachers Hide Students' Gender Transitions From Parents." *The Daily Caller*. September 30th, 2022.

<https://dailycaller.com/2022/09/30/california-school-district-guidebook-hide-students-transitions/>

<sup>2</sup> Christenson, Josh. "Some Schools Won't Tell Parents When Their Kids Express Gender Confusion. Experts Say That's Illegal." *The Washington Free Beacon*. August 11, 2022

<https://freebeacon.com/campus/some-schools-wont-tell-parents-when-their-kids-express-gender-confusion-experts-say-thats-illegal/>

<sup>3</sup> Schemmel, Alec. "Maryland schools won't tell parents if their child is changing gender identity." *Fox Baltimore*. July 26th, 2022.

<https://foxbaltimore.com/news/local/maryland-school-districts-wont-tell-parents-if-their-child-is-changing-gender-identity>

as unquestionable truth in their childrens' schools. Similarly, public school teachers should not be compelled to express support for a particular ideology that violates their conscience, religion, or academic freedom, including [being mandated to address others by preferred pronouns](#).<sup>4</sup>

Importantly, the model policy succeeds in reaffirming the primacy of those constitutional rights in Virginia public schools, while also ensuring that gender nonconforming students are made to feel welcome. Students with gender dysphoria are often seen as easy targets for bullying and other acts of hostility, and it is the responsibility of school officials to make clear that such behaviors will not be tolerated. The model policy acknowledges this responsibility, stating explicitly that schools “should attempt to accommodate students with distinctive needs, including any student with a persistent and sincere belief that his or her gender differs from his or her sex,” and that “every effort should be made to ensure that a transgender student wishing to change his or her means of address is treated with respect, compassion, and dignity in the classroom and school environment.”

The vast majority of Virginians share the goal of preventing any student—including gender nonconforming students—from being treated as less deserving of respect than their peers. They also recognize that many issues surrounding gender identity are complicated and involve multiple legitimate interests that frequently conflict with one another. The VDOE's 2022 model policy does an exemplary job of balancing those competing interests by recognizing constitutional rights while at the same time reaffirming the commitment to creating a welcoming school environment for gender nonconforming students.

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<sup>4</sup> *The Associated Press*. “Court Backs A Teacher Who Refused To Use Transgender Students' Pronouns.” August 31st, 2021.  
<https://www.npr.org/2021/08/31/1032929550/virginia-teacher-transgender-pronoun-supreme-court>