



January 14, 2022

Dr. Michael G. Richards
Superintendent
Harrisonburg City Public Schools
via email: mrichards@harrisonburg.k12.va.us

Demand to rescind unconstitutional policies and practices

Dear Dr. Richards:

We write concerning Harrisonburg City Public Schools' policy and practice to require all staff members to affirm any student's gender dysphoria by using any name and pronoun the student requests, and while affirmatively hiding any requested change from the student's parents. This policy and practice violates both the United States Constitution and the Virginia Constitution and should be rescinded immediately.

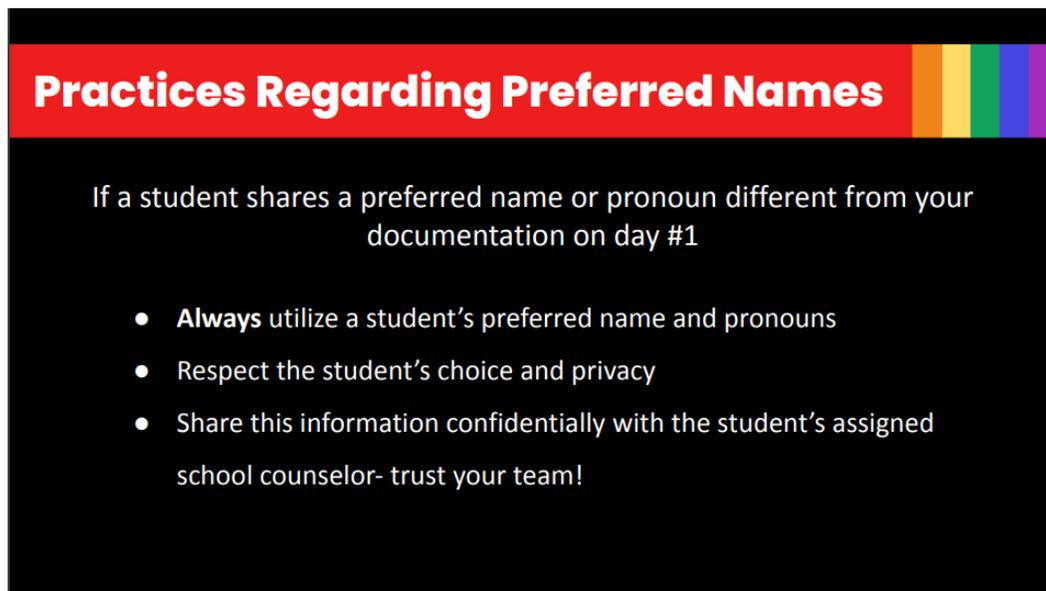
We, Alliance Defending Freedom (ADF), represent a group of concerned parents who have children enrolled in Harrisonburg City Public Schools (HCPS) and concerned teachers who are employed by HCPS. Our clients believe that every child should be treated with dignity and respect, and that all students must be cared for by their school community. They are mindful that an increasing number of children find themselves struggling with feelings of discomfort with their sex, and some suffer from clinical gender dysphoria. And they understand that gender dysphoria can be a serious mental-health condition that requires professional help. Our clients are alarmed that HCPS is seeking to impose an ideologically driven one-size-fits-all approach to dealing with these delicate and sensitive issues that is harmful to children, while surreptitiously pushing parents out of the conversation. Our clients are concerned that this approach not only goes against the best interests of children enrolled in HCPS, but also violates state and federal constitutional rights.

ADF shares our clients' concerns. By way of introduction, ADF promotes the freedom of every person to live out their religious convictions in the public square and is dedicated to ensuring freedom of speech, religious freedom, and the fundamental right of parents to direct the upbringing of their children. We have a track record of success.¹ We are hopeful that we can resolve this matter amicably.

¹ Alliance Defending Freedom has consistently achieved successful results for its clients before the United States Supreme Court, including 13 victories before the highest court in the last 10 years. See, e.g., *Americans for Prosperity Found. v. Bonta*; *Thomas More Law Center v. Bonta*, 141 S. Ct. 2373

Factual background

HCPS policy and practice is that HCPS staff must affirm a student's gender identity by using any name and pronoun the student requests, while hiding such requests from the child's parents. HCPS detailed this policy and practice in a presentation to HCPS staff entitled: "*Supporting Our Transgender Students.*" The presentation specifically states that: all HCPS staff must "**Always** utilize a student's preferred name and pronouns" (emphasis in original):



Practices Regarding Preferred Names

If a student shares a preferred name or pronoun different from your documentation on day #1

- **Always** utilize a student's preferred name and pronouns
- Respect the student's choice and privacy
- Share this information confidentially with the student's assigned school counselor- trust your team!

The presentation also directed staff that "All communication should be *in collaboration with the student*," not the student's parents, and "If the parent/guardian

(2021) (upholding donors' First Amendment rights); *Uzuegbunam v. Preczewski*, 141 S. Ct. 792 (2021) (student free speech); *March for Life Educ. & Def Fund v. California*, 141 S. Ct. 192 (2020); *Thompson v. Hebdon*, 140 S. Ct. 348 (2019) (overturning ruling upholding a law limiting political contributions); *NIFLA v. Becerra*, 138 S. Ct. 2361 (2018) (upholding ADF's client's free speech rights against the State of California); *Masterpiece Cakeshop, LTD. v. Colo. Civil Rights Comm'n*, 138 S. Ct. 1719 (2018) (upholding ADF's client's First Amendment rights); *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S. Ct. 2012 (2017) (upholding ADF's client's First Amendment rights); *Zubik v. Burwell*, 136 S. Ct. 1557 (2016) (representing Geneva College and Southern Nazarene University in consolidated cases) (upholding ADF's clients' First Amendment rights); *Reed v. Town of Gilbert, Ariz.*, 135 S. Ct. 2218 (2015) (unanimously upholding ADF's client's free-speech rights); *Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751 (2014) (representing Conestoga Wood Specialties Corp. in consolidated case) (striking down federal burdens on ADF's client's free-exercise rights); *Town of Greece, N.Y. v. Galloway*, 134 S. Ct. 1811 (2014) (upholding a legislative prayer policy promulgated by a town represented by ADF); *Ariz. Christian Sch. Tuition Org. v. Winn*, 131 S. Ct. 1436 (2011) (upholding a state's tuition tax credit program defended by a faith-based tuition organization represented by ADF).

is **NOT** aware, you should utilize the student's preferred name at school but not in any communication with the parent/guardian" (emphases in original). In other words, staff are affirmatively directed to hide information about a student's gender dysphoria from that student's parents.

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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HCPS provided similar guidance to the public on October 19, 2021.²

Based on the guidance, HCPS's current and mandatory policy and practice requires that:

- a) HCPS staff must affirm a student's gender dysphoria by always utilizing a student's preferred name and pronouns, based exclusively on a student's, not their parents', request; that
- b) HCPS staff cannot inform parents that their child has requested a different name and pronouns at school and must affirmatively hide that information if the parents are not already aware of that information; and that
- c) Any HCPS staff member who does not comply with the policy and practice will face disciplinary action.

For the reasons set out below, HCPS's policy is unconstitutional.

² HCPS, *Supporting ALL Students Presentation* (October 19, 2021), available at: <https://bit.ly/34QAJn9>

Analysis

HCPS's policy and practice violates the federal and state constitutions in several areas but the following are of most immediate concern to our clients:

Use of Pronouns

As it pertains to pronouns, the requirement that staff "always" use the pronouns preferred by the students violates the state and federal constitutions in at least two ways. First, the Policy violates the free speech rights and religious freedom of any staff member who objects on religious or other grounds to being compelled to use a name or pronoun that does not correspond with a child's biological sex. Second, it interferes with the parental rights of any parent who gives specific instructions about the use of pronouns for their child because it requires HCPS staff to ignore that instruction.

Violations of speech and religious freedom rights are present not only when a child requests standard pronouns that correspond to a different sex, but to a whole spectrum of asserted nonstandard pronouns such as "zie/zim," "tey/ter," "fae/faer," among many others.³ Using a pronoun when referring to a student expresses a message about that student's sex. Our clients understand that this policy is mandatory and that HCPS will take disciplinary measures against staff members who do not comply. A staff member may object to expressing that message for a variety of religious or other reasons. Yet, HCPS compels staff to "always" use whichever pronouns students might prefer, in violation of those staff members' Free Speech and Free Exercise rights. *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943); *Meriwether v. Hartop*, 992 F.3d 492, 506-07 (6th Cir. 2021).

Moreover, and in addition to constitutional violations associated with mandatory use of preferred pronouns, it is equally clear that a school cannot interfere with parental rights by rejecting a parent's clearly articulated direction to use a child's given name and pronouns that correspond to the child's biological sex. The parents' directions may be further to medical and/or religious considerations. Yet in these circumstances, HCPS requires staff to "always" use the pronouns "preferred" by the student, unlawfully interfering with the parents' free exercise rights and their fundamental right to make decisions concerning the upbringing and care of their

³ See, for example, Ezra Marcus, *A Guide to Neopronouns*, New York Times (April 8, 2021), available at: <https://www.nytimes.com/2021/04/08/style/neopronouns-nonbinary-explainer.html>; Elizabeth Yuko, *Beyond They/Them: What Are Neopronouns?*, Rolling Stone (June 29, 2021), available at: <https://www.rollingstone.com/culture/culture-features/neopronouns-they-them-pronoun-alternative-1190069/>

child. *Troxel v. Granville*, 530 U.S. 57, 66 (2000); *Wisconsin v. Yoder*, 406 U.S. 205, 232 (1972); *L.F. v. Breit*, 736 S.E.2d 711, 721 (Va. 2013), Va. Code § 1-240.1.

Restricting communication with parents

HCPS policy and practice also violates the federal and state constitutions by requiring staff to hide information, and even lie to parents, about their child's requested pronoun if the parent does not already know about their child's request.

For example, if a student begins using a different name and different pronouns at school, and requests that his or her parents not be informed about the situation, policy and practice requires staff to comply with the student's request at school, while using the child's legal name and pronouns with their parent, thus affirmatively concealing the fact that the child is using a different name and pronouns in the school environment. Staff members who must then answer direct questions from the parents on gender issues would necessarily have to be deceptive to comply with this policy and practice.

There could be important medical or other ongoing concerns relating to a child's wellbeing that would be missed in a context where staff members are prevented from being candid with the parents. Adopting a different gender identity during childhood is a major and controversial decision. Multiple studies have found that the vast majority children (80–90%) who experience feelings of discomfort with their sex, including gender dysphoria, ultimately “desist,” finding comfort with their biological sex; that is, *unless* they take affirmative steps to live inconsistently with their biological sex. Because messages from others help to form a child's identity, many psychiatric professionals believe that taking these “transitioning” steps can become self-reinforcing, setting children down a path with life-long consequences.

Dr. Stephen Levine, for example, a prominent expert in this area,⁴ has written that childhood transitions are “an experimental procedure that has a high likelihood of changing the life path of the child, with highly unpredictable effects on mental and physical health, suicidality, and life expectancy.”⁵ Another expert, Dr. Kenneth Zucker, who for over three decades ran one of the leading clinics in the world for children with gender dysphoria, has publicly written that “parents who support, implement, or encourage a gender social transition (and clinicians who recommend

⁴ Dr. Levine was the *court-appointed* expert in a major case in this area. See *Kosilek v. Spencer*, 774 F.3d 63, 77 (1st Cir. 2014).

⁵ Affidavit of Dr. Stephen Levine at 27, Dkt. 31, *Doe v. Madison Metropolitan Sch. Dist.*, No. 20-CV-454 (Dane Cty. Cir. Ct., Feb. 19, 2020), available at: <https://will-law.org/wp-content/uploads/2021/02/affidavit-stephen-levine-with-exhibit.pdf>

one) are implementing a psychosocial treatment that will increase the odds of long-term persistence.”⁶

The HCPS policy and practices take this life-altering decision out of parents’ hands—and knowledge—and places it with educators, who have no expertise whatsoever in these matters, and with minors, who lack the “maturity, experience, and capacity for judgment required for making life’s difficult decisions,” *Parham v. J.R.*, 442 U.S. 584, 602 (1979). Consequently, through this practice, HCPS unlawfully interferes with the parents’ fundamental rights to make decisions concerning the upbringing and care of their child.

Conclusion

We demand that you immediately rescind the policy and practices outlined in the HCPS “*Supporting Our Transgender Students*” presentation because it violates the free speech, religious freedom, and parental rights of HCPS teachers and parents. By 6:00pm on **January 28, 2022**, please confirm in writing that the policy and practice have been rescinded, and that staff and the public have been notified that the policy and practice have been rescinded.

Without satisfactory confirmation as sought above, we will have no option but to advise our clients of other avenues for vindicating their rights. Please immediately place a litigation hold on all e-mail accounts, document collections, social media accounts, and all other sources of information or communications (including electronically stored information) that reference in any way HCPS policy and practice concerning gender issues.

Sincerely,



Katherine L. Anderson
Sr. Counsel, Director of Center for Parental Rights

⁶ Kenneth J. 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 Int’l J. of Transgenderism 231 (2018), available at: <https://www.researchgate.net/publication/325443416>

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