

Mr. Warren C. Holland
Accomack County
PO Box 330
Accomac, VA 23301

RE: Students' Rights Reminder for the 2019-2020 Academic Year

Dear Superintendent,

As our communities prepare for the new academic year and students head back to school, it is important to be aware of the key issues affecting Virginia's students and their rights. Being aware of students' rights under state and federal law can help school officials avoid any potential legal complications and contribute to a positive learning environment that will allow each student to thrive.



Virginia

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Federal and state laws afford children enrolled in school protection from discrimination and harassment based on race, color, religion, sex, national origin, or disability. Schools are responsible for ensuring these rights are protected and for promoting a safe school atmosphere. Additionally, schools are responsible for ensuring that students' right to free speech is respected and that the freedom to practice their religion—or no religion at all— is upheld.

Summarized below you will find information regarding: student speech rights; the Pledge of Allegiance; censorship; religious beliefs and accommodations; the rights of students who identify as LGBTQ; discipline and arrests; the rights of students with disabilities; the rights of students who are immigrants; and the rights of students who are pregnant.

We hope this information will help your school district understand the rights of students in schools and guide you in taking actions that ensure student rights are protected in a safe and supportive environment. Please do not hesitate to contact the ACLU of Virginia if you have any questions about these issues or if we can be of any assistance to you in evaluating and formulating school policy on any of these matters. We can be reached at (804) 644-8022 or acluva@acluva.org.

Very truly yours,

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Claire G. Gastañaga
Executive Director



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STUDENT SPEECH RIGHTS

The First Amendment ensures that students cannot be punished for exercising free speech rights, even if administrators do not approve of their message. In the landmark Supreme Court case *Tinker v. Des Moines Independent Community School District*, the ACLU successfully challenged a school district's decision to suspend three students for wearing armbands in protest of the Vietnam War. 393 U.S. 503 (1969). The court declared that students and teachers do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." *Id.* at 506. Over the years, the ACLU has also successfully defended the right of students to wear an anti-abortion armband, a pro-LGBTQ t-shirt, and shirts critical of political figures. Schools may not discipline students for expressing an idea or political viewpoint in class or during school activities, as long as it does not cause a substantial disruption to the school environment.

It is true that the constitutional rights of students in public school are not the same as those of adults exercising First Amendment rights on public streets. Students' speech rights may be limited by reasonable time, place, and manner restrictions because of the unique characteristics of the school environment. A school may limit student speech, for example, through reasonable school-wide policies against cyberbullying. Additionally, schools may prohibit vulgar or offensive speech that is inconsistent with the "fundamental values of public school education." *Bethel Sch. Dist. No. 43 v. Fraser*, 478 U.S. 675, 685-86 (1986).

School officials should take care, however, not to define peaceful assembly as behavior that causes a substantial disruption to school activities. If students engage in a walkout, school officials may choose to discipline students for missing class but may not engage in harsher punishment because of the message or political nature of the action. School officials must not draw distinctions based on the content of a student's speech or expressive activity in imposing discipline.

PLEDGE OF ALLEGIANCE

Schools cannot punish students for refusing to salute the flag or say the Pledge of Allegiance. *W.Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624 (1943); *Sherman v. Comm. Consol. Sch. Dist. 21*, 980 F.2d 437 (7th Cir. 1992). School officials also cannot force students to stand during the Pledge of Allegiance or leave the room if a student refuses to recite the Pledge. *See* Va. Code § 22.1-202(C) ("[N]o student shall be compelled to recite the Pledge if he, his parent or legal guardian objects on religious, philosophical or other grounds to his participating in this exercise.")

CENSORSHIP

Books: Banning books, removing books and materials from a classroom or library, or otherwise making it difficult for students to read a broad array of literature limits intellectual freedom. Making books and ideas unavailable based on their content or viewpoint or taking books out of schools because they are controversial, unpopular, or offensive, may violate the First Amendment. *See, e.g., Bd. of Educ. v. Pico*, 457 U.S. 853 (1982). Courts view school libraries as the main place where students exercise their freedom "to inquire, to study and to evaluate, to gain new maturity and understanding." *Id.* at 868.

Student Publications: Schools may review and control the content of school sponsored student publications including student newspapers, yearbooks, literary magazines, on-campus videos, and radio broadcasts. But schools cannot control student publications that are not sponsored or funded by the school, not done as part of a class or school project, or that are done on a student’s own time with their own resources. *See, e.g., Burt v. Barker*, 861 F.2d 1149 (9th Cir. 1988); *Fujishima v. Bd. of Ed.*, 160 F.2d 1355 (7th Cir. 1972); *Eisner v. Stanford Bd. of Ed.*, 440 F.2d 803 (2d Cir. 1971).

RELIGIOUS BELIEFS AND ACCOMMODATIONS

Free Exercise Clause: Under the First Amendment’s Free Exercise Clause, students have the right to worship as they see fit, with only limited restrictions. This means that while at school, students are free to practice their religion or nonreligion and to express themselves religiously without interference by school officials. Students may, for example, wear religious attire or clothing with religious messaging to school; post religious messages or images on their lockers; or bring religious materials, including religious texts or objects, to school. School officials may not, for instance, require students to remove their hijab, yarmulke, or other head covering, as it substantially burdens the practice of the student’s religion. *See, e.g., Va. Code § 22.1-203.1 et seq.; VIRGINIA STATE BOARD OF EDUCATION, GUIDELINES CONCERNING RELIGIOUS ACTIVITY IN THE PUBLIC SCHOOLS* (1995).

Establishment Clause: Under the First Amendment’s Establishment Clause, school officials cannot favor one religion over another or favor religion over nonbelief. In practice, this means that school officials and teachers cannot conduct prayer or bible-reading sessions, organize or participate in student-led prayer, or hold a prayer at graduation or sporting events, even when participation is voluntary. *See, e.g., Abington Sch. Dist. v. Schempp*, 374 U.S. 203 (1963); *Engel v. Vitale*, 370 U.S. 421 (1962); *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 308 (2000); *Lee v. Weisman*, 505 U.S. 577 (1992). Teachers cannot lead students in devotional activities or encourage student participation in religious activity before or after school, during class, or at school-sponsored activities. In fact, in the public-school context, the Supreme Court has invalidated almost every instance of school- or teacher-sponsored religious expression. Under Virginia law, school boards are permitted to establish a daily observance of one minute of silence, but the school board must be careful to ensure that its policy has secular justifications and is not merely a pretense to encourage prayer. *See, e.g., Va. Code § 22.1-203; VIRGINIA STATE BOARD OF EDUCATION, GUIDELINES CONCERNING RELIGIOUS ACTIVITY IN THE PUBLIC SCHOOLS* (1995).

RIGHTS OF LGBTQ STUDENTS

Cultivating a Safe Environment: Bullying of lesbian, gay, bisexual, transgender, and queer (“LGBTQ”) students has been documented as pervasive at many schools and is all too often ignored, or even encouraged, by school officials. LGBTQ students have a right to live their authentic lives and express themselves at school. Students have a right to be out of the closet at school, and conversely, public schools are not allowed to “out” students publicly. School officials and administrators must ensure they are creating a safe learning environment and protecting LGBTQ students from bullying and harassment. *See, e.g., Title IX, 20 U.S.C. § 1681* (schools may be liable if they act with deliberate indifference in failing to protect students from severe harassment on the basis of sex).



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Discipline: The intimate relationships of LGBTQ students must be treated with equal dignity as those of heterosexual students. Policies that prohibit same-sex couples or dates from attending prom, homecoming, or other dance functions violates students’ rights under Title IX of the Education Amendments of 1972, the Equal Protection Clause of the U.S. Constitution, and the Bill of Rights of the Virginia Constitution. LGBTQ students should not be punished more severely than heterosexual students for similar behavior, including for displays of affection.

LGBTQ Student Organizations: Students interested in forming a student organization, typically called a gay-straight alliance (“GSA”), are to be treated the same as students forming any other noncurricular organization or club. *See, e.g., 20 U.S.C. § 4071(a)* (if a school allows any noncurricular student group to meet, it cannot deny other groups the same access based on the content of their interest); *Gay All. of Students v. Matthews*, 544 F.2d 162 (4th Cir. 1976).

Gender Markers, Pronouns, and Student Records: Students should be addressed using their preferred names and pronouns. Refusing to do so, or refusing to update the gender markers on a student’s records when provided with appropriate documentation, may be considered a form of sex-based discrimination under federal law. *See Grimm v. Gloucester County Sch. Bd.*, Civil No. 4:15-cv-52, 2019 U.S. Dist. Lexis 138246 (E.D. Va. Aug. 9, 2019). Likewise, a student’s right to privacy includes a student’s sexual orientation or gender identity. It is against the law for school officials to disclose or compel students to disclose this information, even if the student appears open about their sexual orientation or gender identity. *See C.N. v. Wolf*, 410 F. Supp. 2d 894, 903 (C.D. Cal. 2005).



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DISCIPLINE AND ARRESTS

Generally: School discipline policies and practices should be fair and equitable and should prioritize prevention and intervention rather than harsh punishments like suspension, expulsion, and referral to law enforcement. The goal of discipline should be to teach appropriate behaviors and minimize the time students spend out of class. In Spring 2015, the Center for Public Integrity released a study finding that Virginia led the country in schools referring students to law enforcement, a phenomenon known as the “school-to-prison pipeline.” Additional studies conducted by the Virginia Department of Education found that African American students and students with disabilities were disproportionately represented in both suspensions and referrals to law enforcement throughout Virginia schools. These disparities open up school districts to potential legal challenges for race and disability discrimination under federal civil rights laws. *See, e.g.*, Complaint against Richmond Public Schools, available at <https://acluva.org/en/cases/equal-treatment-richmond-public-school-students>. In order to avoid potential legal problems, and to provide a more equitable school environment, school officials should reevaluate and revise their current discipline policies and practices to create a more positive and preventative approach to student conduct. The Virginia Board of Education has provided a blueprint for schools to use in revising their outdated practices – the Model Guidance for Positive, Preventative Code of Student Conduct Policy and Alternatives to Suspension, available at http://www.doe.virginia.gov/support/student_conduct/index.shtml.

Due Process: The U.S. Constitution requires that students receive due process before disciplinary measures are imposed. This means that school officials must follow certain procedures before they can suspend or expel students from school. Students are generally entitled to receive notice prior to any suspension or expulsion. The notice must include the facts concerning the suspension or expulsion, and the basis for any accusations. The notice must also provide students an opportunity to explain their side. *See, e.g., Goss v. Lopez*, 419 U.S. 565 (1975). For Virginia’s specific procedural requirements, see Va. Code § 22.1-276.01 *et seq.*

Corporal Punishment: Corporal or physical punishment of students is strictly prohibited by Virginia law. *See* Va. Code § 22.1-279.1.

School Resource Officers: School Resource Officers (“SROs”) can protect students from outside danger, but often punish minor behaviors through ticketing and arrests. Law enforcement intervention should typically be a last resort for minor violations best handled by schools as discipline issues. For additional resources on how to limit disproportionate school-based arrests or referrals to law enforcement, visit the Model Guidance for Positive, Preventative Code of Student Conduct Policy and Alternatives to Suspension, available at http://www.doe.virginia.gov/support/student_conduct/index.shtml.



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RIGHTS OF STUDENTS WITH DISABILITIES

Students with disabilities are provided legal protections under several federal laws. The Individuals with Disabilities Education Act (“IDEA”) requires that public schools provide eligible students with disabilities a “free, appropriate public education” in the least restrictive environment. *See* 20 U.S.C. § 1400 *et seq.* As part of the IDEA, schools must affirmatively locate, identify, and evaluate children in their district for special education and related services, a process known as “child find.” Parents may also request an evaluation at any time in writing or by speaking to a teacher or administrator, and the school district must respond to the parent’s request. Schools must educate students with disabilities in the least restrictive setting possible, with an emphasis on inclusion and integration in the regular education classroom where feasible. Additionally, students receiving special education services under the IDEA, as well as students suspected of being eligible to receive services, are entitled to certain protections and safeguards in the school discipline process. *See* 34 C.F.R. § 300.530 *et seq.*

Students with disabilities are also provided with protections under Section 504 of the Rehabilitation Act of 1974 (“Section 504”) and Title II of the Americans with Disabilities Act (“ADA”). Section 504 and the ADA prohibit discrimination against students with disabilities. This means that schools are prohibited by federal law from denying students with disabilities equal access to academic courses, field trips, extracurricular activities, school technology, and health services. School officials also have a duty to ensure that students with disabilities are not being discriminated against by being denied necessary accommodations. Restricting access to educational activities and opportunities, ignoring harassment and bullying, and failing to train staff on compliance with these laws is also prohibited under Section 504 and the ADA. *See also* Va. Code § 22.1-213 *et seq.*

RIGHTS OF IMMIGRANT STUDENTS

Schools cannot discriminate against students on the basis of race, color, or national origin. This includes discriminating against students on the basis of their immigration status. Undocumented students have a right to a free public education in your school district regardless of their immigration status, and schools cannot deny students of this right. *See, e.g., Plyler v. Doe*, 457 U.S. 202 (1982). Likewise, schools are not permitted to deny enrollment to a student based on their undocumented status; treat a student differently to determine residency; make inquiries of students or parents that may expose their undocumented status; require social security numbers from parents or students for purposes of enrollment; or engage in any other practices which may chill the right of access to school. Schools cannot turn away students with limited English proficiency; they must be provided with language instruction. *See, e.g., Lau v. Nichols*, 414 U.S. 563 (1974).

School officials should not allow immigration enforcement actions on school grounds without a judicial warrant based on probable cause that a criminal violation of the immigration laws has occurred. Schools should not call immigration authorities on students or consent to any immigration enforcement on school grounds without a criminal warrant. There is no state law requiring any state or local official to contact immigration officials nor any state or federal law prohibiting adoption of a policy that protects students and teachers from immigration action in the absence of a judicial criminal warrant.

RIGHTS OF PREGNANT STUDENTS

Schools are prohibited from excluding pregnant students and students with children under Title IX of the Education Amendments of 1972. This means that schools must also ensure that pregnant students or students with children have access to educational instruction, school activities, and reasonable accommodations, to the same extent that students with temporary medical conditions are given access, including the ability to make up missed classwork and learn in a safe, nonjudgmental environment. Schools are also not allowed to punish students who choose to terminate a pregnancy or to reveal a student's private medical information.



AMERICAN CIVIL LIBERTIES UNION
FOUNDATION

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Dr. Matthew S. Haas
Albemarle County
401 McIntire Road
Charlottesville, VA 22902

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RIGHTS OF STUDENTS WITH DISABILITIES

Students with disabilities are provided legal protections under several federal laws. The Individuals with Disabilities Education Act (“IDEA”) requires that public schools provide eligible students with disabilities a “free, appropriate public education” in the least restrictive environment. *See* 20 U.S.C. § 1400 *et seq.* As part of the IDEA, schools must affirmatively locate, identify, and evaluate children in their district for special education and related services, a process known as “child find.” Parents may also request an evaluation at any time in writing or by speaking to a teacher or administrator, and the school district must respond to the parent’s request. Schools must educate students with disabilities in the least restrictive setting possible, with an emphasis on inclusion and integration in the regular education classroom where feasible. Additionally, students receiving special education services under the IDEA, as well as students suspected of being eligible to receive services, are entitled to certain protections and safeguards in the school discipline process. *See* 34 C.F.R. § 300.530 *et seq.*

Students with disabilities are also provided with protections under Section 504 of the Rehabilitation Act of 1974 (“Section 504”) and Title II of the Americans with Disabilities Act (“ADA”). Section 504 and the ADA prohibit discrimination against students with disabilities. This means that schools are prohibited by federal law from denying students with disabilities equal access to academic courses, field trips, extracurricular activities, school technology, and health services. School officials also have a duty to ensure that students with disabilities are not being discriminated against by being denied necessary accommodations. Restricting access to educational activities and opportunities, ignoring harassment and bullying, and failing to train staff on compliance with these laws is also prohibited under Section 504 and the ADA. *See also* Va. Code § 22.1-213 *et seq.*

RIGHTS OF IMMIGRANT STUDENTS

Schools cannot discriminate against students on the basis of race, color, or national origin. This includes discriminating against students on the basis of their immigration status. Undocumented students have a right to a free public education in your school district regardless of their immigration status, and schools cannot deny students of this right. *See, e.g., Plyler v. Doe*, 457 U.S. 202 (1982). Likewise, schools are not permitted to deny enrollment to a student based on their undocumented status; treat a student differently to determine residency; make inquiries of students or parents that may expose their undocumented status; require social security numbers from parents or students for purposes of enrollment; or engage in any other practices which may chill the right of access to school. Schools cannot turn away students with limited English proficiency; they must be provided with language instruction. *See, e.g., Lau v. Nichols*, 414 U.S. 563 (1974).

School officials should not allow immigration enforcement actions on school grounds without a judicial warrant based on probable cause that a criminal violation of the immigration laws has occurred. Schools should not call immigration authorities on students or consent to any immigration enforcement on school grounds without a criminal warrant. There is no state law requiring any state or local official to contact immigration officials nor any state or federal law prohibiting adoption of a policy that protects students and teachers from immigration action in the absence of a judicial criminal warrant.

RIGHTS OF PREGNANT STUDENTS

Schools are prohibited from excluding pregnant students and students with children under Title IX of the Education Amendments of 1972. This means that schools must also ensure that pregnant students or students with children have access to educational instruction, school activities, and reasonable accommodations, to the same extent that students with temporary medical conditions are given access, including the ability to make up missed classwork and learn in a safe, nonjudgmental environment. Schools are also not allowed to punish students who choose to terminate a pregnancy or to reveal a student's private medical information.



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Eugene P. Kotulka
Alleghany County
P.O. Drawer 140
Low Moor, VA 24457

RE: Students' Rights Reminder for the 2019-2020 Academic Year

Dear Superintendent,

As our communities prepare for the new academic year and students head back to school, it is important to be aware of the key issues affecting Virginia's students and their rights. Being aware of students' rights under state and federal law can help school officials avoid any potential legal complications and contribute to a positive learning environment that will allow each student to thrive.



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Federal and state laws afford children enrolled in school protection from discrimination and harassment based on race, color, religion, sex, national origin, or disability. Schools are responsible for ensuring these rights are protected and for promoting a safe school atmosphere. Additionally, schools are responsible for ensuring that students' right to free speech is respected and that the freedom to practice their religion—or no religion at all— is upheld.

Summarized below you will find information regarding: student speech rights; the Pledge of Allegiance; censorship; religious beliefs and accommodations; the rights of students who identify as LGBTQ; discipline and arrests; the rights of students with disabilities; the rights of students who are immigrants; and the rights of students who are pregnant.

We hope this information will help your school district understand the rights of students in schools and guide you in taking actions that ensure student rights are protected in a safe and supportive environment. Please do not hesitate to contact the ACLU of Virginia if you have any questions about these issues or if we can be of any assistance to you in evaluating and formulating school policy on any of these matters. We can be reached at (804) 644-8022 or acluva@acluva.org.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Claire G. Gastañaga". The signature is fluid and cursive.

Claire G. Gastañaga
Executive Director



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STUDENT SPEECH RIGHTS

The First Amendment ensures that students cannot be punished for exercising free speech rights, even if administrators do not approve of their message. In the landmark Supreme Court case *Tinker v. Des Moines Independent Community School District*, the ACLU successfully challenged a school district's decision to suspend three students for wearing armbands in protest of the Vietnam War. 393 U.S. 503 (1969). The court declared that students and teachers do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." *Id.* at 506. Over the years, the ACLU has also successfully defended the right of students to wear an anti-abortion armband, a pro-LGBTQ t-shirt, and shirts critical of political figures. Schools may not discipline students for expressing an idea or political viewpoint in class or during school activities, as long as it does not cause a substantial disruption to the school environment.

It is true that the constitutional rights of students in public school are not the same as those of adults exercising First Amendment rights on public streets. Students' speech rights may be limited by reasonable time, place, and manner restrictions because of the unique characteristics of the school environment. A school may limit student speech, for example, through reasonable school-wide policies against cyberbullying. Additionally, schools may prohibit vulgar or offensive speech that is inconsistent with the "fundamental values of public school education." *Bethel Sch. Dist. No. 43 v. Fraser*, 478 U.S. 675, 685-86 (1986).

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RELIGIOUS BELIEFS AND ACCOMMODATIONS

Free Exercise Clause: Under the First Amendment’s Free Exercise Clause, students have the right to worship as they see fit, with only limited restrictions. This means that while at school, students are free to practice their religion or nonreligion and to express themselves religiously without interference by school officials. Students may, for example, wear religious attire or clothing with religious messaging to school; post religious messages or images on their lockers; or bring religious materials, including religious texts or objects, to school. School officials may not, for instance, require students to remove their hijab, yarmulke, or other head covering, as it substantially burdens the practice of the student’s religion. *See, e.g., Va. Code § 22.1-203.1 et seq.*; VIRGINIA STATE BOARD OF EDUCATION, GUIDELINES CONCERNING RELIGIOUS ACTIVITY IN THE PUBLIC SCHOOLS (1995).

Establishment Clause: Under the First Amendment’s Establishment Clause, school officials cannot favor one religion over another or favor religion over nonbelief. In practice, this means that school officials and teachers cannot conduct prayer or bible-reading sessions, organize or participate in student-led prayer, or hold a prayer at graduation or sporting events, even when participation is voluntary. *See, e.g., Abington Sch. Dist. v. Schempp*, 374 U.S. 203 (1963); *Engel v. Vitale*, 370 U.S. 421 (1962); *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 308 (2000); *Lee v. Weisman*, 505 U.S. 577 (1992). Teachers cannot lead students in devotional activities or encourage student participation in religious activity before or after school, during class, or at school-sponsored activities. In fact, in the public-school context, the Supreme Court has invalidated almost every instance of school- or teacher-sponsored religious expression. Under Virginia law, school boards are permitted to establish a daily observance of one minute of silence, but the school board must be careful to ensure that its policy has secular justifications and is not merely a pretense to encourage prayer. *See, e.g., Va. Code § 22.1-203*; VIRGINIA STATE BOARD OF EDUCATION, GUIDELINES CONCERNING RELIGIOUS ACTIVITY IN THE PUBLIC SCHOOLS (1995).

RIGHTS OF LGBTQ STUDENTS

Cultivating a Safe Environment: Bullying of lesbian, gay, bisexual, transgender, and queer (“LGBTQ”) students has been documented as pervasive at many schools and is all too often ignored, or even encouraged, by school officials. LGBTQ students have a right to live their authentic lives and express themselves at school. Students have a right to be out of the closet at school, and conversely, public schools are not allowed to “out” students publicly. School officials and administrators must ensure they are creating a safe learning environment and protecting LGBTQ students from bullying and harassment. *See, e.g., Title IX, 20 U.S.C. § 1681* (schools may be liable if they act with deliberate indifference in failing to protect students from severe harassment on the basis of sex).



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Restrooms & Locker Rooms: Transgender students must be allowed to use the restroom facilities consistent with their gender identity. Schools cannot create policies that require transgender students to use restrooms or locker rooms that do not correspond with their gender identity, and schools may not create policies that require transgender students to use single-user facilities. *See Grimm v. Gloucester County Sch. Bd.*, Civil No. 4:15-cv-52, 2019 U.S. Dist. Lexis 138246 (E.D. Va. Aug. 9, 2019).

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Discipline: The intimate relationships of LGBTQ students must be treated with equal dignity as those of heterosexual students. Policies that prohibit same-sex couples or dates from attending prom, homecoming, or other dance functions violates students’ rights under Title IX of the Education Amendments of 1972, the Equal Protection Clause of the U.S. Constitution, and the Bill of Rights of the Virginia Constitution. LGBTQ students should not be punished more severely than heterosexual students for similar behavior, including for displays of affection.

LGBTQ Student Organizations: Students interested in forming a student organization, typically called a gay-straight alliance (“GSA”), are to be treated the same as students forming any other noncurricular organization or club. *See, e.g., 20 U.S.C. § 4071(a)* (if a school allows any noncurricular student group to meet, it cannot deny other groups the same access based on the content of their interest); *Gay All. of Students v. Matthews*, 544 F.2d 162 (4th Cir. 1976).

Gender Markers, Pronouns, and Student Records: Students should be addressed using their preferred names and pronouns. Refusing to do so, or refusing to update the gender markers on a student’s records when provided with appropriate documentation, may be considered a form of sex-based discrimination under federal law. *See Grimm v. Gloucester County Sch. Bd.*, Civil No. 4:15-cv-52, 2019 U.S. Dist. Lexis 138246 (E.D. Va. Aug. 9, 2019). Likewise, a student’s right to privacy includes a student’s sexual orientation or gender identity. It is against the law for school officials to disclose or compel students to disclose this information, even if the student appears open about their sexual orientation or gender identity. *See C.N. v. Wolf*, 410 F. Supp. 2d 894, 903 (C.D. Cal. 2005).



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DISCIPLINE AND ARRESTS

Generally: School discipline policies and practices should be fair and equitable and should prioritize prevention and intervention rather than harsh punishments like suspension, expulsion, and referral to law enforcement. The goal of discipline should be to teach appropriate behaviors and minimize the time students spend out of class. In Spring 2015, the Center for Public Integrity released a study finding that Virginia led the country in schools referring students to law enforcement, a phenomenon known as the “school-to-prison pipeline.” Additional studies conducted by the Virginia Department of Education found that African American students and students with disabilities were disproportionately represented in both suspensions and referrals to law enforcement throughout Virginia schools. These disparities open up school districts to potential legal challenges for race and disability discrimination under federal civil rights laws. *See, e.g.*, Complaint against Richmond Public Schools, available at <https://acluva.org/en/cases/equal-treatment-richmond-public-school-students>. In order to avoid potential legal problems, and to provide a more equitable school environment, school officials should reevaluate and revise their current discipline policies and practices to create a more positive and preventative approach to student conduct. The Virginia Board of Education has provided a blueprint for schools to use in revising their outdated practices – the Model Guidance for Positive, Preventative Code of Student Conduct Policy and Alternatives to Suspension, available at http://www.doe.virginia.gov/support/student_conduct/index.shtml.

Due Process: The U.S. Constitution requires that students receive due process before disciplinary measures are imposed. This means that school officials must follow certain procedures before they can suspend or expel students from school. Students are generally entitled to receive notice prior to any suspension or expulsion. The notice must include the facts concerning the suspension or expulsion, and the basis for any accusations. The notice must also provide students an opportunity to explain their side. *See, e.g., Goss v. Lopez*, 419 U.S. 565 (1975). For Virginia’s specific procedural requirements, see Va. Code § 22.1-276.01 *et seq.*

Corporal Punishment: Corporal or physical punishment of students is strictly prohibited by Virginia law. *See* Va. Code § 22.1-279.1.

School Resource Officers: School Resource Officers (“SROs”) can protect students from outside danger, but often punish minor behaviors through ticketing and arrests. Law enforcement intervention should typically be a last resort for minor violations best handled by schools as discipline issues. For additional resources on how to limit disproportionate school-based arrests or referrals to law enforcement, visit the Model Guidance for Positive, Preventative Code of Student Conduct Policy and Alternatives to Suspension, available at http://www.doe.virginia.gov/support/student_conduct/index.shtml.



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RIGHTS OF PREGNANT STUDENTS

Schools are prohibited from excluding pregnant students and students with children under Title IX of the Education Amendments of 1972. This means that schools must also ensure that pregnant students or students with children have access to educational instruction, school activities, and reasonable accommodations, to the same extent that students with temporary medical conditions are given access, including the ability to make up missed classwork and learn in a safe, nonjudgmental environment. Schools are also not allowed to punish students who choose to terminate a pregnancy or to reveal a student's private medical information.



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Dr. Lorena Harper
Amelia County
8701 Otterburn Road Suite 101
Amelia, VA 23002

RE: Students' Rights Reminder for the 2019-2020 Academic Year

Dear Superintendent,

As our communities prepare for the new academic year and students head back to school, it is important to be aware of the key issues affecting Virginia's students and their rights. Being aware of students' rights under state and federal law can help school officials avoid any potential legal complications and contribute to a positive learning environment that will allow each student to thrive.



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Summarized below you will find information regarding: student speech rights; the Pledge of Allegiance; censorship; religious beliefs and accommodations; the rights of students who identify as LGBTQ; discipline and arrests; the rights of students with disabilities; the rights of students who are immigrants; and the rights of students who are pregnant.

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Gender Markers, Pronouns, and Student Records: Students should be addressed using their preferred names and pronouns. Refusing to do so, or refusing to update the gender markers on a student’s records when provided with appropriate documentation, may be considered a form of sex-based discrimination under federal law. *See Grimm v. Gloucester County Sch. Bd.*, Civil No. 4:15-cv-52, 2019 U.S. Dist. Lexis 138246 (E.D. Va. Aug. 9, 2019). Likewise, a student’s right to privacy includes a student’s sexual orientation or gender identity. It is against the law for school officials to disclose or compel students to disclose this information, even if the student appears open about their sexual orientation or gender identity. *See C.N. v. Wolf*, 410 F. Supp. 2d 894, 903 (C.D. Cal. 2005).



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DISCIPLINE AND ARRESTS

Generally: School discipline policies and practices should be fair and equitable and should prioritize prevention and intervention rather than harsh punishments like suspension, expulsion, and referral to law enforcement. The goal of discipline should be to teach appropriate behaviors and minimize the time students spend out of class. In Spring 2015, the Center for Public Integrity released a study finding that Virginia led the country in schools referring students to law enforcement, a phenomenon known as the “school-to-prison pipeline.” Additional studies conducted by the Virginia Department of Education found that African American students and students with disabilities were disproportionately represented in both suspensions and referrals to law enforcement throughout Virginia schools. These disparities open up school districts to potential legal challenges for race and disability discrimination under federal civil rights laws. *See, e.g.*, Complaint against Richmond Public Schools, available at <https://acluva.org/en/cases/equal-treatment-richmond-public-school-students>. In order to avoid potential legal problems, and to provide a more equitable school environment, school officials should reevaluate and revise their current discipline policies and practices to create a more positive and preventative approach to student conduct. The Virginia Board of Education has provided a blueprint for schools to use in revising their outdated practices – the Model Guidance for Positive, Preventative Code of Student Conduct Policy and Alternatives to Suspension, available at http://www.doe.virginia.gov/support/student_conduct/index.shtml.

Due Process: The U.S. Constitution requires that students receive due process before disciplinary measures are imposed. This means that school officials must follow certain procedures before they can suspend or expel students from school. Students are generally entitled to receive notice prior to any suspension or expulsion. The notice must include the facts concerning the suspension or expulsion, and the basis for any accusations. The notice must also provide students an opportunity to explain their side. *See, e.g., Goss v. Lopez*, 419 U.S. 565 (1975). For Virginia’s specific procedural requirements, see Va. Code § 22.1-276.01 *et seq.*

Corporal Punishment: Corporal or physical punishment of students is strictly prohibited by Virginia law. *See* Va. Code § 22.1-279.1.

School Resource Officers: School Resource Officers (“SROs”) can protect students from outside danger, but often punish minor behaviors through ticketing and arrests. Law enforcement intervention should typically be a last resort for minor violations best handled by schools as discipline issues. For additional resources on how to limit disproportionate school-based arrests or referrals to law enforcement, visit the Model Guidance for Positive, Preventative Code of Student Conduct Policy and Alternatives to Suspension, available at http://www.doe.virginia.gov/support/student_conduct/index.shtml.



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RIGHTS OF STUDENTS WITH DISABILITIES

Students with disabilities are provided legal protections under several federal laws. The Individuals with Disabilities Education Act (“IDEA”) requires that public schools provide eligible students with disabilities a “free, appropriate public education” in the least restrictive environment. *See* 20 U.S.C. § 1400 *et seq.* As part of the IDEA, schools must affirmatively locate, identify, and evaluate children in their district for special education and related services, a process known as “child find.” Parents may also request an evaluation at any time in writing or by speaking to a teacher or administrator, and the school district must respond to the parent’s request. Schools must educate students with disabilities in the least restrictive setting possible, with an emphasis on inclusion and integration in the regular education classroom where feasible. Additionally, students receiving special education services under the IDEA, as well as students suspected of being eligible to receive services, are entitled to certain protections and safeguards in the school discipline process. *See* 34 C.F.R. § 300.530 *et seq.*

Students with disabilities are also provided with protections under Section 504 of the Rehabilitation Act of 1974 (“Section 504”) and Title II of the Americans with Disabilities Act (“ADA”). Section 504 and the ADA prohibit discrimination against students with disabilities. This means that schools are prohibited by federal law from denying students with disabilities equal access to academic courses, field trips, extracurricular activities, school technology, and health services. School officials also have a duty to ensure that students with disabilities are not being discriminated against by being denied necessary accommodations. Restricting access to educational activities and opportunities, ignoring harassment and bullying, and failing to train staff on compliance with these laws is also prohibited under Section 504 and the ADA. *See also* Va. Code § 22.1-213 *et seq.*

RIGHTS OF IMMIGRANT STUDENTS

Schools cannot discriminate against students on the basis of race, color, or national origin. This includes discriminating against students on the basis of their immigration status. Undocumented students have a right to a free public education in your school district regardless of their immigration status, and schools cannot deny students of this right. *See, e.g., Plyler v. Doe*, 457 U.S. 202 (1982). Likewise, schools are not permitted to deny enrollment to a student based on their undocumented status; treat a student differently to determine residency; make inquiries of students or parents that may expose their undocumented status; require social security numbers from parents or students for purposes of enrollment; or engage in any other practices which may chill the right of access to school. Schools cannot turn away students with limited English proficiency; they must be provided with language instruction. *See, e.g., Lau v. Nichols*, 414 U.S. 563 (1974).

School officials should not allow immigration enforcement actions on school grounds without a judicial warrant based on probable cause that a criminal violation of the immigration laws has occurred. Schools should not call immigration authorities on students or consent to any immigration enforcement on school grounds without a criminal warrant. There is no state law requiring any state or local official to contact immigration officials nor any state or federal law prohibiting adoption of a policy that protects students and teachers from immigration action in the absence of a judicial criminal warrant.

RIGHTS OF PREGNANT STUDENTS

Schools are prohibited from excluding pregnant students and students with children under Title IX of the Education Amendments of 1972. This means that schools must also ensure that pregnant students or students with children have access to educational instruction, school activities, and reasonable accommodations, to the same extent that students with temporary medical conditions are given access, including the ability to make up missed classwork and learn in a safe, nonjudgmental environment. Schools are also not allowed to punish students who choose to terminate a pregnancy or to reveal a student's private medical information.



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Dr. Robert Arnold
Amherst County
P. O. Box 1257
Amherst, VA 24521

RE: Students' Rights Reminder for the 2019-2020 Academic Year

Dear Superintendent,

As our communities prepare for the new academic year and students head back to school, it is important to be aware of the key issues affecting Virginia's students and their rights. Being aware of students' rights under state and federal law can help school officials avoid any potential legal complications and contribute to a positive learning environment that will allow each student to thrive.



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Federal and state laws afford children enrolled in school protection from discrimination and harassment based on race, color, religion, sex, national origin, or disability. Schools are responsible for ensuring these rights are protected and for promoting a safe school atmosphere. Additionally, schools are responsible for ensuring that students' right to free speech is respected and that the freedom to practice their religion—or no religion at all— is upheld.

Summarized below you will find information regarding: student speech rights; the Pledge of Allegiance; censorship; religious beliefs and accommodations; the rights of students who identify as LGBTQ; discipline and arrests; the rights of students with disabilities; the rights of students who are immigrants; and the rights of students who are pregnant.

We hope this information will help your school district understand the rights of students in schools and guide you in taking actions that ensure student rights are protected in a safe and supportive environment. Please do not hesitate to contact the ACLU of Virginia if you have any questions about these issues or if we can be of any assistance to you in evaluating and formulating school policy on any of these matters. We can be reached at (804) 644-8022 or acluva@acluva.org.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Claire G. Gastañaga". The signature is fluid and cursive.

Claire G. Gastañaga
Executive Director



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STUDENT SPEECH RIGHTS

The First Amendment ensures that students cannot be punished for exercising free speech rights, even if administrators do not approve of their message. In the landmark Supreme Court case *Tinker v. Des Moines Independent Community School District*, the ACLU successfully challenged a school district's decision to suspend three students for wearing armbands in protest of the Vietnam War. 393 U.S. 503 (1969). The court declared that students and teachers do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." *Id.* at 506. Over the years, the ACLU has also successfully defended the right of students to wear an anti-abortion armband, a pro-LGBTQ t-shirt, and shirts critical of political figures. Schools may not discipline students for expressing an idea or political viewpoint in class or during school activities, as long as it does not cause a substantial disruption to the school environment.

It is true that the constitutional rights of students in public school are not the same as those of adults exercising First Amendment rights on public streets. Students' speech rights may be limited by reasonable time, place, and manner restrictions because of the unique characteristics of the school environment. A school may limit student speech, for example, through reasonable school-wide policies against cyberbullying. Additionally, schools may prohibit vulgar or offensive speech that is inconsistent with the "fundamental values of public school education." *Bethel Sch. Dist. No. 43 v. Fraser*, 478 U.S. 675, 685-86 (1986).

School officials should take care, however, not to define peaceful assembly as behavior that causes a substantial disruption to school activities. If students engage in a walkout, school officials may choose to discipline students for missing class but may not engage in harsher punishment because of the message or political nature of the action. School officials must not draw distinctions based on the content of a student's speech or expressive activity in imposing discipline.

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Schools cannot punish students for refusing to salute the flag or say the Pledge of Allegiance. *W.Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624 (1943); *Sherman v. Comm. Consol. Sch. Dist. 21*, 980 F.2d 437 (7th Cir. 1992). School officials also cannot force students to stand during the Pledge of Allegiance or leave the room if a student refuses to recite the Pledge. *See* Va. Code § 22.1-202(C) ("[N]o student shall be compelled to recite the Pledge if he, his parent or legal guardian objects on religious, philosophical or other grounds to his participating in this exercise.")

CENSORSHIP

Books: Banning books, removing books and materials from a classroom or library, or otherwise making it difficult for students to read a broad array of literature limits intellectual freedom. Making books and ideas unavailable based on their content or viewpoint or taking books out of schools because they are controversial, unpopular, or offensive, may violate the First Amendment. *See, e.g., Bd. of Educ. v. Pico*, 457 U.S. 853 (1982). Courts view school libraries as the main place where students exercise their freedom "to inquire, to study and to evaluate, to gain new maturity and understanding." *Id.* at 868.

Student Publications: Schools may review and control the content of school sponsored student publications including student newspapers, yearbooks, literary magazines, on-campus videos, and radio broadcasts. But schools cannot control student publications that are not sponsored or funded by the school, not done as part of a class or school project, or that are done on a student’s own time with their own resources. *See, e.g., Burt v. Barker*, 861 F.2d 1149 (9th Cir. 1988); *Fujishima v. Bd. of Ed.*, 160 F.2d 1355 (7th Cir. 1972); *Eisner v. Stanford Bd. of Ed.*, 440 F.2d 803 (2d Cir. 1971).

RELIGIOUS BELIEFS AND ACCOMMODATIONS

Free Exercise Clause: Under the First Amendment’s Free Exercise Clause, students have the right to worship as they see fit, with only limited restrictions. This means that while at school, students are free to practice their religion or nonreligion and to express themselves religiously without interference by school officials. Students may, for example, wear religious attire or clothing with religious messaging to school; post religious messages or images on their lockers; or bring religious materials, including religious texts or objects, to school. School officials may not, for instance, require students to remove their hijab, yarmulke, or other head covering, as it substantially burdens the practice of the student’s religion. *See, e.g., Va. Code § 22.1-203.1 et seq.; VIRGINIA STATE BOARD OF EDUCATION, GUIDELINES CONCERNING RELIGIOUS ACTIVITY IN THE PUBLIC SCHOOLS* (1995).

Establishment Clause: Under the First Amendment’s Establishment Clause, school officials cannot favor one religion over another or favor religion over nonbelief. In practice, this means that school officials and teachers cannot conduct prayer or bible-reading sessions, organize or participate in student-led prayer, or hold a prayer at graduation or sporting events, even when participation is voluntary. *See, e.g., Abington Sch. Dist. v. Schempp*, 374 U.S. 203 (1963); *Engel v. Vitale*, 370 U.S. 421 (1962); *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 308 (2000); *Lee v. Weisman*, 505 U.S. 577 (1992). Teachers cannot lead students in devotional activities or encourage student participation in religious activity before or after school, during class, or at school-sponsored activities. In fact, in the public-school context, the Supreme Court has invalidated almost every instance of school- or teacher-sponsored religious expression. Under Virginia law, school boards are permitted to establish a daily observance of one minute of silence, but the school board must be careful to ensure that its policy has secular justifications and is not merely a pretense to encourage prayer. *See, e.g., Va. Code § 22.1-203; VIRGINIA STATE BOARD OF EDUCATION, GUIDELINES CONCERNING RELIGIOUS ACTIVITY IN THE PUBLIC SCHOOLS* (1995).

RIGHTS OF LGBTQ STUDENTS

Cultivating a Safe Environment: Bullying of lesbian, gay, bisexual, transgender, and queer (“LGBTQ”) students has been documented as pervasive at many schools and is all too often ignored, or even encouraged, by school officials. LGBTQ students have a right to live their authentic lives and express themselves at school. Students have a right to be out of the closet at school, and conversely, public schools are not allowed to “out” students publicly. School officials and administrators must ensure they are creating a safe learning environment and protecting LGBTQ students from bullying and harassment. *See, e.g., Title IX, 20 U.S.C. § 1681* (schools may be liable if they act with deliberate indifference in failing to protect students from severe harassment on the basis of sex).



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Restrooms & Locker Rooms: Transgender students must be allowed to use the restroom facilities consistent with their gender identity. Schools cannot create policies that require transgender students to use restrooms or locker rooms that do not correspond with their gender identity, and schools may not create policies that require transgender students to use single-user facilities. *See Grimm v. Gloucester County Sch. Bd.*, Civil No. 4:15-cv-52, 2019 U.S. Dist. Lexis 138246 (E.D. Va. Aug. 9, 2019).

Dress Code: School officials cannot force students to wear clothing inconsistent with their gender identity. Public schools may have dress codes, but dress codes cannot treat students differently based on their gender, force students to conform to sex stereotypes, or censor particular viewpoints. Schools cannot enact dress codes based on the stereotype that only girls can wear some types of clothes and only boys wear other types of clothes. *See, e.g., U.S. v. Virginia*, 518 U.S. 515, 533 (1996) (government actors must not treat male and female students differently because of “overbroad generalizations about the different talents, capacities, or preferences of males and females.”). Schools may, for example, require that skirts be a certain length; however, they cannot require that some students wear skirts and prohibit others from doing so based on the student’s sex or gender expression. This also applies to pants, ties, or other clothing associated with traditional gender roles. And it applies to attire requirements for homecoming, prom, graduation, and other special school events.

Discipline: The intimate relationships of LGBTQ students must be treated with equal dignity as those of heterosexual students. Policies that prohibit same-sex couples or dates from attending prom, homecoming, or other dance functions violates students’ rights under Title IX of the Education Amendments of 1972, the Equal Protection Clause of the U.S. Constitution, and the Bill of Rights of the Virginia Constitution. LGBTQ students should not be punished more severely than heterosexual students for similar behavior, including for displays of affection.

LGBTQ Student Organizations: Students interested in forming a student organization, typically called a gay-straight alliance (“GSA”), are to be treated the same as students forming any other noncurricular organization or club. *See, e.g., 20 U.S.C. § 4071(a)* (if a school allows any noncurricular student group to meet, it cannot deny other groups the same access based on the content of their interest); *Gay All. of Students v. Matthews*, 544 F.2d 162 (4th Cir. 1976).

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DISCIPLINE AND ARRESTS

Generally: School discipline policies and practices should be fair and equitable and should prioritize prevention and intervention rather than harsh punishments like suspension, expulsion, and referral to law enforcement. The goal of discipline should be to teach appropriate behaviors and minimize the time students spend out of class. In Spring 2015, the Center for Public Integrity released a study finding that Virginia led the country in schools referring students to law enforcement, a phenomenon known as the “school-to-prison pipeline.” Additional studies conducted by the Virginia Department of Education found that African American students and students with disabilities were disproportionately represented in both suspensions and referrals to law enforcement throughout Virginia schools. These disparities open up school districts to potential legal challenges for race and disability discrimination under federal civil rights laws. *See, e.g.*, Complaint against Richmond Public Schools, available at <https://acluva.org/en/cases/equal-treatment-richmond-public-school-students>. In order to avoid potential legal problems, and to provide a more equitable school environment, school officials should reevaluate and revise their current discipline policies and practices to create a more positive and preventative approach to student conduct. The Virginia Board of Education has provided a blueprint for schools to use in revising their outdated practices – the Model Guidance for Positive, Preventative Code of Student Conduct Policy and Alternatives to Suspension, available at http://www.doe.virginia.gov/support/student_conduct/index.shtml.

Due Process: The U.S. Constitution requires that students receive due process before disciplinary measures are imposed. This means that school officials must follow certain procedures before they can suspend or expel students from school. Students are generally entitled to receive notice prior to any suspension or expulsion. The notice must include the facts concerning the suspension or expulsion, and the basis for any accusations. The notice must also provide students an opportunity to explain their side. *See, e.g., Goss v. Lopez*, 419 U.S. 565 (1975). For Virginia’s specific procedural requirements, see Va. Code § 22.1-276.01 *et seq.*

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RIGHTS OF STUDENTS WITH DISABILITIES

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RIGHTS OF IMMIGRANT STUDENTS

Schools cannot discriminate against students on the basis of race, color, or national origin. This includes discriminating against students on the basis of their immigration status. Undocumented students have a right to a free public education in your school district regardless of their immigration status, and schools cannot deny students of this right. *See, e.g., Plyler v. Doe*, 457 U.S. 202 (1982). Likewise, schools are not permitted to deny enrollment to a student based on their undocumented status; treat a student differently to determine residency; make inquiries of students or parents that may expose their undocumented status; require social security numbers from parents or students for purposes of enrollment; or engage in any other practices which may chill the right of access to school. Schools cannot turn away students with limited English proficiency; they must be provided with language instruction. *See, e.g., Lau v. Nichols*, 414 U.S. 563 (1974).

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RIGHTS OF PREGNANT STUDENTS

Schools are prohibited from excluding pregnant students and students with children under Title IX of the Education Amendments of 1972. This means that schools must also ensure that pregnant students or students with children have access to educational instruction, school activities, and reasonable accommodations, to the same extent that students with temporary medical conditions are given access, including the ability to make up missed classwork and learn in a safe, nonjudgmental environment. Schools are also not allowed to punish students who choose to terminate a pregnancy or to reveal a student's private medical information.



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Dr. Annette A. Bennett
Appomattox County
P.O. Box 548
Appomattox, VA 24522

RE: Students' Rights Reminder for the 2019-2020 Academic Year

Dear Superintendent,

As our communities prepare for the new academic year and students head back to school, it is important to be aware of the key issues affecting Virginia's students and their rights. Being aware of students' rights under state and federal law can help school officials avoid any potential legal complications and contribute to a positive learning environment that will allow each student to thrive.



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Summarized below you will find information regarding: student speech rights; the Pledge of Allegiance; censorship; religious beliefs and accommodations; the rights of students who identify as LGBTQ; discipline and arrests; the rights of students with disabilities; the rights of students who are immigrants; and the rights of students who are pregnant.

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Very truly yours,

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Claire G. Gastañaga
Executive Director



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Establishment Clause: Under the First Amendment’s Establishment Clause, school officials cannot favor one religion over another or favor religion over nonbelief. In practice, this means that school officials and teachers cannot conduct prayer or bible-reading sessions, organize or participate in student-led prayer, or hold a prayer at graduation or sporting events, even when participation is voluntary. *See, e.g., Abington Sch. Dist. v. Schempp*, 374 U.S. 203 (1963); *Engel v. Vitale*, 370 U.S. 421 (1962); *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 308 (2000); *Lee v. Weisman*, 505 U.S. 577 (1992). Teachers cannot lead students in devotional activities or encourage student participation in religious activity before or after school, during class, or at school-sponsored activities. In fact, in the public-school context, the Supreme Court has invalidated almost every instance of school- or teacher-sponsored religious expression. Under Virginia law, school boards are permitted to establish a daily observance of one minute of silence, but the school board must be careful to ensure that its policy has secular justifications and is not merely a pretense to encourage prayer. *See, e.g., Va. Code § 22.1-203*; VIRGINIA STATE BOARD OF EDUCATION, GUIDELINES CONCERNING RELIGIOUS ACTIVITY IN THE PUBLIC SCHOOLS (1995).

RIGHTS OF LGBTQ STUDENTS

Cultivating a Safe Environment: Bullying of lesbian, gay, bisexual, transgender, and queer (“LGBTQ”) students has been documented as pervasive at many schools and is all too often ignored, or even encouraged, by school officials. LGBTQ students have a right to live their authentic lives and express themselves at school. Students have a right to be out of the closet at school, and conversely, public schools are not allowed to “out” students publicly. School officials and administrators must ensure they are creating a safe learning environment and protecting LGBTQ students from bullying and harassment. *See, e.g., Title IX, 20 U.S.C. § 1681* (schools may be liable if they act with deliberate indifference in failing to protect students from severe harassment on the basis of sex).



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Discipline: The intimate relationships of LGBTQ students must be treated with equal dignity as those of heterosexual students. Policies that prohibit same-sex couples or dates from attending prom, homecoming, or other dance functions violates students’ rights under Title IX of the Education Amendments of 1972, the Equal Protection Clause of the U.S. Constitution, and the Bill of Rights of the Virginia Constitution. LGBTQ students should not be punished more severely than heterosexual students for similar behavior, including for displays of affection.

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Gender Markers, Pronouns, and Student Records: Students should be addressed using their preferred names and pronouns. Refusing to do so, or refusing to update the gender markers on a student’s records when provided with appropriate documentation, may be considered a form of sex-based discrimination under federal law. *See Grimm v. Gloucester County Sch. Bd.*, Civil No. 4:15-cv-52, 2019 U.S. Dist. Lexis 138246 (E.D. Va. Aug. 9, 2019). Likewise, a student’s right to privacy includes a student’s sexual orientation or gender identity. It is against the law for school officials to disclose or compel students to disclose this information, even if the student appears open about their sexual orientation or gender identity. *See C.N. v. Wolf*, 410 F. Supp. 2d 894, 903 (C.D. Cal. 2005).



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DISCIPLINE AND ARRESTS

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Due Process: The U.S. Constitution requires that students receive due process before disciplinary measures are imposed. This means that school officials must follow certain procedures before they can suspend or expel students from school. Students are generally entitled to receive notice prior to any suspension or expulsion. The notice must include the facts concerning the suspension or expulsion, and the basis for any accusations. The notice must also provide students an opportunity to explain their side. *See, e.g., Goss v. Lopez*, 419 U.S. 565 (1975). For Virginia’s specific procedural requirements, see Va. Code § 22.1-276.01 *et seq.*

Corporal Punishment: Corporal or physical punishment of students is strictly prohibited by Virginia law. *See* Va. Code § 22.1-279.1.

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Students with disabilities are provided legal protections under several federal laws. The Individuals with Disabilities Education Act (“IDEA”) requires that public schools provide eligible students with disabilities a “free, appropriate public education” in the least restrictive environment. *See* 20 U.S.C. § 1400 *et seq.* As part of the IDEA, schools must affirmatively locate, identify, and evaluate children in their district for special education and related services, a process known as “child find.” Parents may also request an evaluation at any time in writing or by speaking to a teacher or administrator, and the school district must respond to the parent’s request. Schools must educate students with disabilities in the least restrictive setting possible, with an emphasis on inclusion and integration in the regular education classroom where feasible. Additionally, students receiving special education services under the IDEA, as well as students suspected of being eligible to receive services, are entitled to certain protections and safeguards in the school discipline process. *See* 34 C.F.R. § 300.530 *et seq.*

Students with disabilities are also provided with protections under Section 504 of the Rehabilitation Act of 1974 (“Section 504”) and Title II of the Americans with Disabilities Act (“ADA”). Section 504 and the ADA prohibit discrimination against students with disabilities. This means that schools are prohibited by federal law from denying students with disabilities equal access to academic courses, field trips, extracurricular activities, school technology, and health services. School officials also have a duty to ensure that students with disabilities are not being discriminated against by being denied necessary accommodations. Restricting access to educational activities and opportunities, ignoring harassment and bullying, and failing to train staff on compliance with these laws is also prohibited under Section 504 and the ADA. *See also* Va. Code § 22.1-213 *et seq.*

RIGHTS OF IMMIGRANT STUDENTS

Schools cannot discriminate against students on the basis of race, color, or national origin. This includes discriminating against students on the basis of their immigration status. Undocumented students have a right to a free public education in your school district regardless of their immigration status, and schools cannot deny students of this right. *See, e.g., Plyler v. Doe*, 457 U.S. 202 (1982). Likewise, schools are not permitted to deny enrollment to a student based on their undocumented status; treat a student differently to determine residency; make inquiries of students or parents that may expose their undocumented status; require social security numbers from parents or students for purposes of enrollment; or engage in any other practices which may chill the right of access to school. Schools cannot turn away students with limited English proficiency; they must be provided with language instruction. *See, e.g., Lau v. Nichols*, 414 U.S. 563 (1974).

School officials should not allow immigration enforcement actions on school grounds without a judicial warrant based on probable cause that a criminal violation of the immigration laws has occurred. Schools should not call immigration authorities on students or consent to any immigration enforcement on school grounds without a criminal warrant. There is no state law requiring any state or local official to contact immigration officials nor any state or federal law prohibiting adoption of a policy that protects students and teachers from immigration action in the absence of a judicial criminal warrant.

RIGHTS OF PREGNANT STUDENTS

Schools are prohibited from excluding pregnant students and students with children under Title IX of the Education Amendments of 1972. This means that schools must also ensure that pregnant students or students with children have access to educational instruction, school activities, and reasonable accommodations, to the same extent that students with temporary medical conditions are given access, including the ability to make up missed classwork and learn in a safe, nonjudgmental environment. Schools are also not allowed to punish students who choose to terminate a pregnancy or to reveal a student's private medical information.



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Ms. Cintia Johnson
Arlington County
2110 Washington Blvd.
Arlington, VA 22204

RE: Students' Rights Reminder for the 2019-2020 Academic Year

Dear Superintendent,

As our communities prepare for the new academic year and students head back to school, it is important to be aware of the key issues affecting Virginia's students and their rights. Being aware of students' rights under state and federal law can help school officials avoid any potential legal complications and contribute to a positive learning environment that will allow each student to thrive.



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Federal and state laws afford children enrolled in school protection from discrimination and harassment based on race, color, religion, sex, national origin, or disability. Schools are responsible for ensuring these rights are protected and for promoting a safe school atmosphere. Additionally, schools are responsible for ensuring that students' right to free speech is respected and that the freedom to practice their religion—or no religion at all— is upheld.

Summarized below you will find information regarding: student speech rights; the Pledge of Allegiance; censorship; religious beliefs and accommodations; the rights of students who identify as LGBTQ; discipline and arrests; the rights of students with disabilities; the rights of students who are immigrants; and the rights of students who are pregnant.

We hope this information will help your school district understand the rights of students in schools and guide you in taking actions that ensure student rights are protected in a safe and supportive environment. Please do not hesitate to contact the ACLU of Virginia if you have any questions about these issues or if we can be of any assistance to you in evaluating and formulating school policy on any of these matters. We can be reached at (804) 644-8022 or acluva@acluva.org.

Very truly yours,

A handwritten signature in blue ink, which appears to read "Claire G. Gastañaga".

Claire G. Gastañaga
Executive Director



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STUDENT SPEECH RIGHTS

The First Amendment ensures that students cannot be punished for exercising free speech rights, even if administrators do not approve of their message. In the landmark Supreme Court case *Tinker v. Des Moines Independent Community School District*, the ACLU successfully challenged a school district's decision to suspend three students for wearing armbands in protest of the Vietnam War. 393 U.S. 503 (1969). The court declared that students and teachers do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." *Id.* at 506. Over the years, the ACLU has also successfully defended the right of students to wear an anti-abortion armband, a pro-LGBTQ t-shirt, and shirts critical of political figures. Schools may not discipline students for expressing an idea or political viewpoint in class or during school activities, as long as it does not cause a substantial disruption to the school environment.

It is true that the constitutional rights of students in public school are not the same as those of adults exercising First Amendment rights on public streets. Students' speech rights may be limited by reasonable time, place, and manner restrictions because of the unique characteristics of the school environment. A school may limit student speech, for example, through reasonable school-wide policies against cyberbullying. Additionally, schools may prohibit vulgar or offensive speech that is inconsistent with the "fundamental values of public school education." *Bethel Sch. Dist. No. 43 v. Fraser*, 478 U.S. 675, 685-86 (1986).

School officials should take care, however, not to define peaceful assembly as behavior that causes a substantial disruption to school activities. If students engage in a walkout, school officials may choose to discipline students for missing class but may not engage in harsher punishment because of the message or political nature of the action. School officials must not draw distinctions based on the content of a student's speech or expressive activity in imposing discipline.

PLEDGE OF ALLEGIANCE

Schools cannot punish students for refusing to salute the flag or say the Pledge of Allegiance. *W.Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624 (1943); *Sherman v. Comm. Consol. Sch. Dist. 21*, 980 F.2d 437 (7th Cir. 1992). School officials also cannot force students to stand during the Pledge of Allegiance or leave the room if a student refuses to recite the Pledge. *See* Va. Code § 22.1-202(C) ("[N]o student shall be compelled to recite the Pledge if he, his parent or legal guardian objects on religious, philosophical or other grounds to his participating in this exercise.")

CENSORSHIP

Books: Banning books, removing books and materials from a classroom or library, or otherwise making it difficult for students to read a broad array of literature limits intellectual freedom. Making books and ideas unavailable based on their content or viewpoint or taking books out of schools because they are controversial, unpopular, or offensive, may violate the First Amendment. *See, e.g., Bd. of Educ. v. Pico*, 457 U.S. 853 (1982). Courts view school libraries as the main place where students exercise their freedom "to inquire, to study and to evaluate, to gain new maturity and understanding." *Id.* at 868.

Student Publications: Schools may review and control the content of school sponsored student publications including student newspapers, yearbooks, literary magazines, on-campus videos, and radio broadcasts. But schools cannot control student publications that are not sponsored or funded by the school, not done as part of a class or school project, or that are done on a student’s own time with their own resources. *See, e.g., Burt v. Barker*, 861 F.2d 1149 (9th Cir. 1988); *Fujishima v. Bd. of Ed.*, 160 F.2d 1355 (7th Cir. 1972); *Eisner v. Stanford Bd. of Ed.*, 440 F.2d 803 (2d Cir. 1971).

RELIGIOUS BELIEFS AND ACCOMMODATIONS

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DISCIPLINE AND ARRESTS

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Schools are prohibited from excluding pregnant students and students with children under Title IX of the Education Amendments of 1972. This means that schools must also ensure that pregnant students or students with children have access to educational instruction, school activities, and reasonable accommodations, to the same extent that students with temporary medical conditions are given access, including the ability to make up missed classwork and learn in a safe, nonjudgmental environment. Schools are also not allowed to punish students who choose to terminate a pregnancy or to reveal a student's private medical information.



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Dr. Eric W. Bond
Augusta County
P O Box 960
Verona, VA 24482

RE: Students' Rights Reminder for the 2019-2020 Academic Year

Dear Superintendent,

As our communities prepare for the new academic year and students head back to school, it is important to be aware of the key issues affecting Virginia's students and their rights. Being aware of students' rights under state and federal law can help school officials avoid any potential legal complications and contribute to a positive learning environment that will allow each student to thrive.



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Federal and state laws afford children enrolled in school protection from discrimination and harassment based on race, color, religion, sex, national origin, or disability. Schools are responsible for ensuring these rights are protected and for promoting a safe school atmosphere. Additionally, schools are responsible for ensuring that students' right to free speech is respected and that the freedom to practice their religion—or no religion at all— is upheld.

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We hope this information will help your school district understand the rights of students in schools and guide you in taking actions that ensure student rights are protected in a safe and supportive environment. Please do not hesitate to contact the ACLU of Virginia if you have any questions about these issues or if we can be of any assistance to you in evaluating and formulating school policy on any of these matters. We can be reached at (804) 644-8022 or acluva@acluva.org.

Very truly yours,

A handwritten signature in blue ink, which appears to read "Claire G. Gastañaga". The signature is fluid and cursive.

Claire G. Gastañaga
Executive Director



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STUDENT SPEECH RIGHTS

The First Amendment ensures that students cannot be punished for exercising free speech rights, even if administrators do not approve of their message. In the landmark Supreme Court case *Tinker v. Des Moines Independent Community School District*, the ACLU successfully challenged a school district's decision to suspend three students for wearing armbands in protest of the Vietnam War. 393 U.S. 503 (1969). The court declared that students and teachers do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." *Id.* at 506. Over the years, the ACLU has also successfully defended the right of students to wear an anti-abortion armband, a pro-LGBTQ t-shirt, and shirts critical of political figures. Schools may not discipline students for expressing an idea or political viewpoint in class or during school activities, as long as it does not cause a substantial disruption to the school environment.

It is true that the constitutional rights of students in public school are not the same as those of adults exercising First Amendment rights on public streets. Students' speech rights may be limited by reasonable time, place, and manner restrictions because of the unique characteristics of the school environment. A school may limit student speech, for example, through reasonable school-wide policies against cyberbullying. Additionally, schools may prohibit vulgar or offensive speech that is inconsistent with the "fundamental values of public school education." *Bethel Sch. Dist. No. 43 v. Fraser*, 478 U.S. 675, 685-86 (1986).

School officials should take care, however, not to define peaceful assembly as behavior that causes a substantial disruption to school activities. If students engage in a walkout, school officials may choose to discipline students for missing class but may not engage in harsher punishment because of the message or political nature of the action. School officials must not draw distinctions based on the content of a student's speech or expressive activity in imposing discipline.

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RIGHTS OF LGBTQ STUDENTS

Cultivating a Safe Environment: Bullying of lesbian, gay, bisexual, transgender, and queer (“LGBTQ”) students has been documented as pervasive at many schools and is all too often ignored, or even encouraged, by school officials. LGBTQ students have a right to live their authentic lives and express themselves at school. Students have a right to be out of the closet at school, and conversely, public schools are not allowed to “out” students publicly. School officials and administrators must ensure they are creating a safe learning environment and protecting LGBTQ students from bullying and harassment. *See, e.g., Title IX, 20 U.S.C. § 1681* (schools may be liable if they act with deliberate indifference in failing to protect students from severe harassment on the basis of sex).



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LGBTQ Student Organizations: Students interested in forming a student organization, typically called a gay-straight alliance (“GSA”), are to be treated the same as students forming any other noncurricular organization or club. *See, e.g., 20 U.S.C. § 4071(a)* (if a school allows any noncurricular student group to meet, it cannot deny other groups the same access based on the content of their interest); *Gay All. of Students v. Matthews*, 544 F.2d 162 (4th Cir. 1976).

Gender Markers, Pronouns, and Student Records: Students should be addressed using their preferred names and pronouns. Refusing to do so, or refusing to update the gender markers on a student’s records when provided with appropriate documentation, may be considered a form of sex-based discrimination under federal law. *See Grimm v. Gloucester County Sch. Bd.*, Civil No. 4:15-cv-52, 2019 U.S. Dist. Lexis 138246 (E.D. Va. Aug. 9, 2019). Likewise, a student’s right to privacy includes a student’s sexual orientation or gender identity. It is against the law for school officials to disclose or compel students to disclose this information, even if the student appears open about their sexual orientation or gender identity. *See C.N. v. Wolf*, 410 F. Supp. 2d 894, 903 (C.D. Cal. 2005).



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DISCIPLINE AND ARRESTS

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Due Process: The U.S. Constitution requires that students receive due process before disciplinary measures are imposed. This means that school officials must follow certain procedures before they can suspend or expel students from school. Students are generally entitled to receive notice prior to any suspension or expulsion. The notice must include the facts concerning the suspension or expulsion, and the basis for any accusations. The notice must also provide students an opportunity to explain their side. *See, e.g., Goss v. Lopez*, 419 U.S. 565 (1975). For Virginia’s specific procedural requirements, see Va. Code § 22.1-276.01 *et seq.*

Corporal Punishment: Corporal or physical punishment of students is strictly prohibited by Virginia law. *See* Va. Code § 22.1-279.1.

School Resource Officers: School Resource Officers (“SROs”) can protect students from outside danger, but often punish minor behaviors through ticketing and arrests. Law enforcement intervention should typically be a last resort for minor violations best handled by schools as discipline issues. For additional resources on how to limit disproportionate school-based arrests or referrals to law enforcement, visit the Model Guidance for Positive, Preventative Code of Student Conduct Policy and Alternatives to Suspension, available at http://www.doe.virginia.gov/support/student_conduct/index.shtml.



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Students with disabilities are provided legal protections under several federal laws. The Individuals with Disabilities Education Act (“IDEA”) requires that public schools provide eligible students with disabilities a “free, appropriate public education” in the least restrictive environment. *See* 20 U.S.C. § 1400 *et seq.* As part of the IDEA, schools must affirmatively locate, identify, and evaluate children in their district for special education and related services, a process known as “child find.” Parents may also request an evaluation at any time in writing or by speaking to a teacher or administrator, and the school district must respond to the parent’s request. Schools must educate students with disabilities in the least restrictive setting possible, with an emphasis on inclusion and integration in the regular education classroom where feasible. Additionally, students receiving special education services under the IDEA, as well as students suspected of being eligible to receive services, are entitled to certain protections and safeguards in the school discipline process. *See* 34 C.F.R. § 300.530 *et seq.*

Students with disabilities are also provided with protections under Section 504 of the Rehabilitation Act of 1974 (“Section 504”) and Title II of the Americans with Disabilities Act (“ADA”). Section 504 and the ADA prohibit discrimination against students with disabilities. This means that schools are prohibited by federal law from denying students with disabilities equal access to academic courses, field trips, extracurricular activities, school technology, and health services. School officials also have a duty to ensure that students with disabilities are not being discriminated against by being denied necessary accommodations. Restricting access to educational activities and opportunities, ignoring harassment and bullying, and failing to train staff on compliance with these laws is also prohibited under Section 504 and the ADA. *See also* Va. Code § 22.1-213 *et seq.*

RIGHTS OF IMMIGRANT STUDENTS

Schools cannot discriminate against students on the basis of race, color, or national origin. This includes discriminating against students on the basis of their immigration status. Undocumented students have a right to a free public education in your school district regardless of their immigration status, and schools cannot deny students of this right. *See, e.g., Plyler v. Doe*, 457 U.S. 202 (1982). Likewise, schools are not permitted to deny enrollment to a student based on their undocumented status; treat a student differently to determine residency; make inquiries of students or parents that may expose their undocumented status; require social security numbers from parents or students for purposes of enrollment; or engage in any other practices which may chill the right of access to school. Schools cannot turn away students with limited English proficiency; they must be provided with language instruction. *See, e.g., Lau v. Nichols*, 414 U.S. 563 (1974).

School officials should not allow immigration enforcement actions on school grounds without a judicial warrant based on probable cause that a criminal violation of the immigration laws has occurred. Schools should not call immigration authorities on students or consent to any immigration enforcement on school grounds without a criminal warrant. There is no state law requiring any state or local official to contact immigration officials nor any state or federal law prohibiting adoption of a policy that protects students and teachers from immigration action in the absence of a judicial criminal warrant.

RIGHTS OF PREGNANT STUDENTS

Schools are prohibited from excluding pregnant students and students with children under Title IX of the Education Amendments of 1972. This means that schools must also ensure that pregnant students or students with children have access to educational instruction, school activities, and reasonable accommodations, to the same extent that students with temporary medical conditions are given access, including the ability to make up missed classwork and learn in a safe, nonjudgmental environment. Schools are also not allowed to punish students who choose to terminate a pregnancy or to reveal a student's private medical information.



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Mrs. Sue F. Hirsh
Bath County
PO Box 67
Warm Springs, VA 24484

RE: Students' Rights Reminder for the 2019-2020 Academic Year

Dear Superintendent,

As our communities prepare for the new academic year and students head back to school, it is important to be aware of the key issues affecting Virginia's students and their rights. Being aware of students' rights under state and federal law can help school officials avoid any potential legal complications and contribute to a positive learning environment that will allow each student to thrive.



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Federal and state laws afford children enrolled in school protection from discrimination and harassment based on race, color, religion, sex, national origin, or disability. Schools are responsible for ensuring these rights are protected and for promoting a safe school atmosphere. Additionally, schools are responsible for ensuring that students' right to free speech is respected and that the freedom to practice their religion—or no religion at all— is upheld.

Summarized below you will find information regarding: student speech rights; the Pledge of Allegiance; censorship; religious beliefs and accommodations; the rights of students who identify as LGBTQ; discipline and arrests; the rights of students with disabilities; the rights of students who are immigrants; and the rights of students who are pregnant.

We hope this information will help your school district understand the rights of students in schools and guide you in taking actions that ensure student rights are protected in a safe and supportive environment. Please do not hesitate to contact the ACLU of Virginia if you have any questions about these issues or if we can be of any assistance to you in evaluating and formulating school policy on any of these matters. We can be reached at (804) 644-8022 or acluva@acluva.org.

Very truly yours,

A handwritten signature in blue ink, which appears to read "Claire G. Gastañaga". The signature is fluid and cursive.

Claire G. Gastañaga
Executive Director



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Schools cannot discriminate against students on the basis of race, color, or national origin. This includes discriminating against students on the basis of their immigration status. Undocumented students have a right to a free public education in your school district regardless of their immigration status, and schools cannot deny students of this right. *See, e.g., Plyler v. Doe*, 457 U.S. 202 (1982). Likewise, schools are not permitted to deny enrollment to a student based on their undocumented status; treat a student differently to determine residency; make inquiries of students or parents that may expose their undocumented status; require social security numbers from parents or students for purposes of enrollment; or engage in any other practices which may chill the right of access to school. Schools cannot turn away students with limited English proficiency; they must be provided with language instruction. *See, e.g., Lau v. Nichols*, 414 U.S. 563 (1974).

School officials should not allow immigration enforcement actions on school grounds without a judicial warrant based on probable cause that a criminal violation of the immigration laws has occurred. Schools should not call immigration authorities on students or consent to any immigration enforcement on school grounds without a criminal warrant. There is no state law requiring any state or local official to contact immigration officials nor any state or federal law prohibiting adoption of a policy that protects students and teachers from immigration action in the absence of a judicial criminal warrant.

RIGHTS OF PREGNANT STUDENTS

Schools are prohibited from excluding pregnant students and students with children under Title IX of the Education Amendments of 1972. This means that schools must also ensure that pregnant students or students with children have access to educational instruction, school activities, and reasonable accommodations, to the same extent that students with temporary medical conditions are given access, including the ability to make up missed classwork and learn in a safe, nonjudgmental environment. Schools are also not allowed to punish students who choose to terminate a pregnancy or to reveal a student's private medical information.



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Dr. Douglas R. Schuch
Bedford County
310 S. Bridge St
P.O. Box 748
Bedford, VA 24523

RE: Students' Rights Reminder for the 2019-2020 Academic Year

Dear Superintendent,

As our communities prepare for the new academic year and students head back to school, it is important to be aware of the key issues affecting Virginia's students and their rights. Being aware of students' rights under state and federal law can help school officials avoid any potential legal complications and contribute to a positive learning environment that will allow each student to thrive.



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Federal and state laws afford children enrolled in school protection from discrimination and harassment based on race, color, religion, sex, national origin, or disability. Schools are responsible for ensuring these rights are protected and for promoting a safe school atmosphere. Additionally, schools are responsible for ensuring that students' right to free speech is respected and that the freedom to practice their religion—or no religion at all—is upheld.

Summarized below you will find information regarding: student speech rights; the Pledge of Allegiance; censorship; religious beliefs and accommodations; the rights of students who identify as LGBTQ; discipline and arrests; the rights of students with disabilities; the rights of students who are immigrants; and the rights of students who are pregnant.

We hope this information will help your school district understand the rights of students in schools and guide you in taking actions that ensure student rights are protected in a safe and supportive environment. Please do not hesitate to contact the ACLU of Virginia if you have any questions about these issues or if we can be of any assistance to you in evaluating and formulating school policy on any of these matters. We can be reached at (804) 644-8022 or acluva@acluva.org.

Very truly yours,

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Claire G. Gastañaga
Executive Director



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STUDENT SPEECH RIGHTS

The First Amendment ensures that students cannot be punished for exercising free speech rights, even if administrators do not approve of their message. In the landmark Supreme Court case *Tinker v. Des Moines Independent Community School District*, the ACLU successfully challenged a school district's decision to suspend three students for wearing armbands in protest of the Vietnam War. 393 U.S. 503 (1969). The court declared that students and teachers do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." *Id.* at 506. Over the years, the ACLU has also successfully defended the right of students to wear an anti-abortion armband, a pro-LGBTQ t-shirt, and shirts critical of political figures. Schools may not discipline students for expressing an idea or political viewpoint in class or during school activities, as long as it does not cause a substantial disruption to the school environment.

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RIGHTS OF LGBTQ STUDENTS

Cultivating a Safe Environment: Bullying of lesbian, gay, bisexual, transgender, and queer (“LGBTQ”) students has been documented as pervasive at many schools and is all too often ignored, or even encouraged, by school officials. LGBTQ students have a right to live their authentic lives and express themselves at school. Students have a right to be out of the closet at school, and conversely, public schools are not allowed to “out” students publicly. School officials and administrators must ensure they are creating a safe learning environment and protecting LGBTQ students from bullying and harassment. *See, e.g., Title IX, 20 U.S.C. § 1681* (schools may be liable if they act with deliberate indifference in failing to protect students from severe harassment on the basis of sex).



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Discipline: The intimate relationships of LGBTQ students must be treated with equal dignity as those of heterosexual students. Policies that prohibit same-sex couples or dates from attending prom, homecoming, or other dance functions violates students’ rights under Title IX of the Education Amendments of 1972, the Equal Protection Clause of the U.S. Constitution, and the Bill of Rights of the Virginia Constitution. LGBTQ students should not be punished more severely than heterosexual students for similar behavior, including for displays of affection.

LGBTQ Student Organizations: Students interested in forming a student organization, typically called a gay-straight alliance (“GSA”), are to be treated the same as students forming any other noncurricular organization or club. *See, e.g., 20 U.S.C. § 4071(a)* (if a school allows any noncurricular student group to meet, it cannot deny other groups the same access based on the content of their interest); *Gay All. of Students v. Matthews*, 544 F.2d 162 (4th Cir. 1976).

Gender Markers, Pronouns, and Student Records: Students should be addressed using their preferred names and pronouns. Refusing to do so, or refusing to update the gender markers on a student’s records when provided with appropriate documentation, may be considered a form of sex-based discrimination under federal law. *See Grimm v. Gloucester County Sch. Bd.*, Civil No. 4:15-cv-52, 2019 U.S. Dist. Lexis 138246 (E.D. Va. Aug. 9, 2019). Likewise, a student’s right to privacy includes a student’s sexual orientation or gender identity. It is against the law for school officials to disclose or compel students to disclose this information, even if the student appears open about their sexual orientation or gender identity. *See C.N. v. Wolf*, 410 F. Supp. 2d 894, 903 (C.D. Cal. 2005).



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DISCIPLINE AND ARRESTS

Generally: School discipline policies and practices should be fair and equitable and should prioritize prevention and intervention rather than harsh punishments like suspension, expulsion, and referral to law enforcement. The goal of discipline should be to teach appropriate behaviors and minimize the time students spend out of class. In Spring 2015, the Center for Public Integrity released a study finding that Virginia led the country in schools referring students to law enforcement, a phenomenon known as the “school-to-prison pipeline.” Additional studies conducted by the Virginia Department of Education found that African American students and students with disabilities were disproportionately represented in both suspensions and referrals to law enforcement throughout Virginia schools. These disparities open up school districts to potential legal challenges for race and disability discrimination under federal civil rights laws. *See, e.g.*, Complaint against Richmond Public Schools, available at <https://acluva.org/en/cases/equal-treatment-richmond-public-school-students>. In order to avoid potential legal problems, and to provide a more equitable school environment, school officials should reevaluate and revise their current discipline policies and practices to create a more positive and preventative approach to student conduct. The Virginia Board of Education has provided a blueprint for schools to use in revising their outdated practices – the Model Guidance for Positive, Preventative Code of Student Conduct Policy and Alternatives to Suspension, available at http://www.doe.virginia.gov/support/student_conduct/index.shtml.

Due Process: The U.S. Constitution requires that students receive due process before disciplinary measures are imposed. This means that school officials must follow certain procedures before they can suspend or expel students from school. Students are generally entitled to receive notice prior to any suspension or expulsion. The notice must include the facts concerning the suspension or expulsion, and the basis for any accusations. The notice must also provide students an opportunity to explain their side. *See, e.g., Goss v. Lopez*, 419 U.S. 565 (1975). For Virginia’s specific procedural requirements, see Va. Code § 22.1-276.01 *et seq.*

Corporal Punishment: Corporal or physical punishment of students is strictly prohibited by Virginia law. *See* Va. Code § 22.1-279.1.

School Resource Officers: School Resource Officers (“SROs”) can protect students from outside danger, but often punish minor behaviors through ticketing and arrests. Law enforcement intervention should typically be a last resort for minor violations best handled by schools as discipline issues. For additional resources on how to limit disproportionate school-based arrests or referrals to law enforcement, visit the Model Guidance for Positive, Preventative Code of Student Conduct Policy and Alternatives to Suspension, available at http://www.doe.virginia.gov/support/student_conduct/index.shtml.



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RIGHTS OF STUDENTS WITH DISABILITIES

Students with disabilities are provided legal protections under several federal laws. The Individuals with Disabilities Education Act (“IDEA”) requires that public schools provide eligible students with disabilities a “free, appropriate public education” in the least restrictive environment. *See* 20 U.S.C. § 1400 *et seq.* As part of the IDEA, schools must affirmatively locate, identify, and evaluate children in their district for special education and related services, a process known as “child find.” Parents may also request an evaluation at any time in writing or by speaking to a teacher or administrator, and the school district must respond to the parent’s request. Schools must educate students with disabilities in the least restrictive setting possible, with an emphasis on inclusion and integration in the regular education classroom where feasible. Additionally, students receiving special education services under the IDEA, as well as students suspected of being eligible to receive services, are entitled to certain protections and safeguards in the school discipline process. *See* 34 C.F.R. § 300.530 *et seq.*

Students with disabilities are also provided with protections under Section 504 of the Rehabilitation Act of 1974 (“Section 504”) and Title II of the Americans with Disabilities Act (“ADA”). Section 504 and the ADA prohibit discrimination against students with disabilities. This means that schools are prohibited by federal law from denying students with disabilities equal access to academic courses, field trips, extracurricular activities, school technology, and health services. School officials also have a duty to ensure that students with disabilities are not being discriminated against by being denied necessary accommodations. Restricting access to educational activities and opportunities, ignoring harassment and bullying, and failing to train staff on compliance with these laws is also prohibited under Section 504 and the ADA. *See also* Va. Code § 22.1-213 *et seq.*

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RIGHTS OF PREGNANT STUDENTS

Schools are prohibited from excluding pregnant students and students with children under Title IX of the Education Amendments of 1972. This means that schools must also ensure that pregnant students or students with children have access to educational instruction, school activities, and reasonable accommodations, to the same extent that students with temporary medical conditions are given access, including the ability to make up missed classwork and learn in a safe, nonjudgmental environment. Schools are also not allowed to punish students who choose to terminate a pregnancy or to reveal a student's private medical information.



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David Scott Meade
Bland County
361 Bears Trail
Bastian, VA 24314

RE: Students' Rights Reminder for the 2019-2020 Academic Year

Dear Superintendent,

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Summarized below you will find information regarding: student speech rights; the Pledge of Allegiance; censorship; religious beliefs and accommodations; the rights of students who identify as LGBTQ; discipline and arrests; the rights of students with disabilities; the rights of students who are immigrants; and the rights of students who are pregnant.

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DISCIPLINE AND ARRESTS

Generally: School discipline policies and practices should be fair and equitable and should prioritize prevention and intervention rather than harsh punishments like suspension, expulsion, and referral to law enforcement. The goal of discipline should be to teach appropriate behaviors and minimize the time students spend out of class. In Spring 2015, the Center for Public Integrity released a study finding that Virginia led the country in schools referring students to law enforcement, a phenomenon known as the “school-to-prison pipeline.” Additional studies conducted by the Virginia Department of Education found that African American students and students with disabilities were disproportionately represented in both suspensions and referrals to law enforcement throughout Virginia schools. These disparities open up school districts to potential legal challenges for race and disability discrimination under federal civil rights laws. *See, e.g.*, Complaint against Richmond Public Schools, available at <https://acluva.org/en/cases/equal-treatment-richmond-public-school-students>. In order to avoid potential legal problems, and to provide a more equitable school environment, school officials should reevaluate and revise their current discipline policies and practices to create a more positive and preventative approach to student conduct. The Virginia Board of Education has provided a blueprint for schools to use in revising their outdated practices – the Model Guidance for Positive, Preventative Code of Student Conduct Policy and Alternatives to Suspension, available at http://www.doe.virginia.gov/support/student_conduct/index.shtml.

Due Process: The U.S. Constitution requires that students receive due process before disciplinary measures are imposed. This means that school officials must follow certain procedures before they can suspend or expel students from school. Students are generally entitled to receive notice prior to any suspension or expulsion. The notice must include the facts concerning the suspension or expulsion, and the basis for any accusations. The notice must also provide students an opportunity to explain their side. *See, e.g., Goss v. Lopez*, 419 U.S. 565 (1975). For Virginia’s specific procedural requirements, see Va. Code § 22.1-276.01 *et seq.*

Corporal Punishment: Corporal or physical punishment of students is strictly prohibited by Virginia law. *See* Va. Code § 22.1-279.1.

School Resource Officers: School Resource Officers (“SROs”) can protect students from outside danger, but often punish minor behaviors through ticketing and arrests. Law enforcement intervention should typically be a last resort for minor violations best handled by schools as discipline issues. For additional resources on how to limit disproportionate school-based arrests or referrals to law enforcement, visit the Model Guidance for Positive, Preventative Code of Student Conduct Policy and Alternatives to Suspension, available at http://www.doe.virginia.gov/support/student_conduct/index.shtml.



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RIGHTS OF STUDENTS WITH DISABILITIES

Students with disabilities are provided legal protections under several federal laws. The Individuals with Disabilities Education Act (“IDEA”) requires that public schools provide eligible students with disabilities a “free, appropriate public education” in the least restrictive environment. *See* 20 U.S.C. § 1400 *et seq.* As part of the IDEA, schools must affirmatively locate, identify, and evaluate children in their district for special education and related services, a process known as “child find.” Parents may also request an evaluation at any time in writing or by speaking to a teacher or administrator, and the school district must respond to the parent’s request. Schools must educate students with disabilities in the least restrictive setting possible, with an emphasis on inclusion and integration in the regular education classroom where feasible. Additionally, students receiving special education services under the IDEA, as well as students suspected of being eligible to receive services, are entitled to certain protections and safeguards in the school discipline process. *See* 34 C.F.R. § 300.530 *et seq.*

Students with disabilities are also provided with protections under Section 504 of the Rehabilitation Act of 1974 (“Section 504”) and Title II of the Americans with Disabilities Act (“ADA”). Section 504 and the ADA prohibit discrimination against students with disabilities. This means that schools are prohibited by federal law from denying students with disabilities equal access to academic courses, field trips, extracurricular activities, school technology, and health services. School officials also have a duty to ensure that students with disabilities are not being discriminated against by being denied necessary accommodations. Restricting access to educational activities and opportunities, ignoring harassment and bullying, and failing to train staff on compliance with these laws is also prohibited under Section 504 and the ADA. *See also* Va. Code § 22.1-213 *et seq.*

RIGHTS OF IMMIGRANT STUDENTS

Schools cannot discriminate against students on the basis of race, color, or national origin. This includes discriminating against students on the basis of their immigration status. Undocumented students have a right to a free public education in your school district regardless of their immigration status, and schools cannot deny students of this right. *See, e.g., Plyler v. Doe*, 457 U.S. 202 (1982). Likewise, schools are not permitted to deny enrollment to a student based on their undocumented status; treat a student differently to determine residency; make inquiries of students or parents that may expose their undocumented status; require social security numbers from parents or students for purposes of enrollment; or engage in any other practices which may chill the right of access to school. Schools cannot turn away students with limited English proficiency; they must be provided with language instruction. *See, e.g., Lau v. Nichols*, 414 U.S. 563 (1974).

School officials should not allow immigration enforcement actions on school grounds without a judicial warrant based on probable cause that a criminal violation of the immigration laws has occurred. Schools should not call immigration authorities on students or consent to any immigration enforcement on school grounds without a criminal warrant. There is no state law requiring any state or local official to contact immigration officials nor any state or federal law prohibiting adoption of a policy that protects students and teachers from immigration action in the absence of a judicial criminal warrant.

RIGHTS OF PREGNANT STUDENTS

Schools are prohibited from excluding pregnant students and students with children under Title IX of the Education Amendments of 1972. This means that schools must also ensure that pregnant students or students with children have access to educational instruction, school activities, and reasonable accommodations, to the same extent that students with temporary medical conditions are given access, including the ability to make up missed classwork and learn in a safe, nonjudgmental environment. Schools are also not allowed to punish students who choose to terminate a pregnancy or to reveal a student's private medical information.



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Dr. Lisa Chen
Botetourt County
143 Poor Farm Rd
Fincastle, VA 24090

RE: Students' Rights Reminder for the 2019-2020 Academic Year

Dear Superintendent,

As our communities prepare for the new academic year and students head back to school, it is important to be aware of the key issues affecting Virginia's students and their rights. Being aware of students' rights under state and federal law can help school officials avoid any potential legal complications and contribute to a positive learning environment that will allow each student to thrive.



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Federal and state laws afford children enrolled in school protection from discrimination and harassment based on race, color, religion, sex, national origin, or disability. Schools are responsible for ensuring these rights are protected and for promoting a safe school atmosphere. Additionally, schools are responsible for ensuring that students' right to free speech is respected and that the freedom to practice their religion—or no religion at all— is upheld.

Summarized below you will find information regarding: student speech rights; the Pledge of Allegiance; censorship; religious beliefs and accommodations; the rights of students who identify as LGBTQ; discipline and arrests; the rights of students with disabilities; the rights of students who are immigrants; and the rights of students who are pregnant.

We hope this information will help your school district understand the rights of students in schools and guide you in taking actions that ensure student rights are protected in a safe and supportive environment. Please do not hesitate to contact the ACLU of Virginia if you have any questions about these issues or if we can be of any assistance to you in evaluating and formulating school policy on any of these matters. We can be reached at (804) 644-8022 or acluva@acluva.org.

Very truly yours,

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Claire G. Gastañaga
Executive Director



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STUDENT SPEECH RIGHTS

The First Amendment ensures that students cannot be punished for exercising free speech rights, even if administrators do not approve of their message. In the landmark Supreme Court case *Tinker v. Des Moines Independent Community School District*, the ACLU successfully challenged a school district's decision to suspend three students for wearing armbands in protest of the Vietnam War. 393 U.S. 503 (1969). The court declared that students and teachers do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." *Id.* at 506. Over the years, the ACLU has also successfully defended the right of students to wear an anti-abortion armband, a pro-LGBTQ t-shirt, and shirts critical of political figures. Schools may not discipline students for expressing an idea or political viewpoint in class or during school activities, as long as it does not cause a substantial disruption to the school environment.

It is true that the constitutional rights of students in public school are not the same as those of adults exercising First Amendment rights on public streets. Students' speech rights may be limited by reasonable time, place, and manner restrictions because of the unique characteristics of the school environment. A school may limit student speech, for example, through reasonable school-wide policies against cyberbullying. Additionally, schools may prohibit vulgar or offensive speech that is inconsistent with the "fundamental values of public school education." *Bethel Sch. Dist. No. 43 v. Fraser*, 478 U.S. 675, 685-86 (1986).

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CENSORSHIP

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RELIGIOUS BELIEFS AND ACCOMMODATIONS

Free Exercise Clause: Under the First Amendment’s Free Exercise Clause, students have the right to worship as they see fit, with only limited restrictions. This means that while at school, students are free to practice their religion or nonreligion and to express themselves religiously without interference by school officials. Students may, for example, wear religious attire or clothing with religious messaging to school; post religious messages or images on their lockers; or bring religious materials, including religious texts or objects, to school. School officials may not, for instance, require students to remove their hijab, yarmulke, or other head covering, as it substantially burdens the practice of the student’s religion. *See, e.g., Va. Code § 22.1-203.1 et seq.; VIRGINIA STATE BOARD OF EDUCATION, GUIDELINES CONCERNING RELIGIOUS ACTIVITY IN THE PUBLIC SCHOOLS* (1995).

Establishment Clause: Under the First Amendment’s Establishment Clause, school officials cannot favor one religion over another or favor religion over nonbelief. In practice, this means that school officials and teachers cannot conduct prayer or bible-reading sessions, organize or participate in student-led prayer, or hold a prayer at graduation or sporting events, even when participation is voluntary. *See, e.g., Abington Sch. Dist. v. Schempp*, 374 U.S. 203 (1963); *Engel v. Vitale*, 370 U.S. 421 (1962); *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 308 (2000); *Lee v. Weisman*, 505 U.S. 577 (1992). Teachers cannot lead students in devotional activities or encourage student participation in religious activity before or after school, during class, or at school-sponsored activities. In fact, in the public-school context, the Supreme Court has invalidated almost every instance of school- or teacher-sponsored religious expression. Under Virginia law, school boards are permitted to establish a daily observance of one minute of silence, but the school board must be careful to ensure that its policy has secular justifications and is not merely a pretense to encourage prayer. *See, e.g., Va. Code § 22.1-203; VIRGINIA STATE BOARD OF EDUCATION, GUIDELINES CONCERNING RELIGIOUS ACTIVITY IN THE PUBLIC SCHOOLS* (1995).

RIGHTS OF LGBTQ STUDENTS

Cultivating a Safe Environment: Bullying of lesbian, gay, bisexual, transgender, and queer (“LGBTQ”) students has been documented as pervasive at many schools and is all too often ignored, or even encouraged, by school officials. LGBTQ students have a right to live their authentic lives and express themselves at school. Students have a right to be out of the closet at school, and conversely, public schools are not allowed to “out” students publicly. School officials and administrators must ensure they are creating a safe learning environment and protecting LGBTQ students from bullying and harassment. *See, e.g., Title IX, 20 U.S.C. § 1681* (schools may be liable if they act with deliberate indifference in failing to protect students from severe harassment on the basis of sex).



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Restrooms & Locker Rooms: Transgender students must be allowed to use the restroom facilities consistent with their gender identity. Schools cannot create policies that require transgender students to use restrooms or locker rooms that do not correspond with their gender identity, and schools may not create policies that require transgender students to use single-user facilities. *See Grimm v. Gloucester County Sch. Bd.*, Civil No. 4:15-cv-52, 2019 U.S. Dist. Lexis 138246 (E.D. Va. Aug. 9, 2019).

Dress Code: School officials cannot force students to wear clothing inconsistent with their gender identity. Public schools may have dress codes, but dress codes cannot treat students differently based on their gender, force students to conform to sex stereotypes, or censor particular viewpoints. Schools cannot enact dress codes based on the stereotype that only girls can wear some types of clothes and only boys wear other types of clothes. *See, e.g., U.S. v. Virginia*, 518 U.S. 515, 533 (1996) (government actors must not treat male and female students differently because of “overbroad generalizations about the different talents, capacities, or preferences of males and females.”). Schools may, for example, require that skirts be a certain length; however, they cannot require that some students wear skirts and prohibit others from doing so based on the student’s sex or gender expression. This also applies to pants, ties, or other clothing associated with traditional gender roles. And it applies to attire requirements for homecoming, prom, graduation, and other special school events.

Discipline: The intimate relationships of LGBTQ students must be treated with equal dignity as those of heterosexual students. Policies that prohibit same-sex couples or dates from attending prom, homecoming, or other dance functions violates students’ rights under Title IX of the Education Amendments of 1972, the Equal Protection Clause of the U.S. Constitution, and the Bill of Rights of the Virginia Constitution. LGBTQ students should not be punished more severely than heterosexual students for similar behavior, including for displays of affection.

LGBTQ Student Organizations: Students interested in forming a student organization, typically called a gay-straight alliance (“GSA”), are to be treated the same as students forming any other noncurricular organization or club. *See, e.g., 20 U.S.C. § 4071(a)* (if a school allows any noncurricular student group to meet, it cannot deny other groups the same access based on the content of their interest); *Gay All. of Students v. Matthews*, 544 F.2d 162 (4th Cir. 1976).

Gender Markers, Pronouns, and Student Records: Students should be addressed using their preferred names and pronouns. Refusing to do so, or refusing to update the gender markers on a student’s records when provided with appropriate documentation, may be considered a form of sex-based discrimination under federal law. *See Grimm v. Gloucester County Sch. Bd.*, Civil No. 4:15-cv-52, 2019 U.S. Dist. Lexis 138246 (E.D. Va. Aug. 9, 2019). Likewise, a student’s right to privacy includes a student’s sexual orientation or gender identity. It is against the law for school officials to disclose or compel students to disclose this information, even if the student appears open about their sexual orientation or gender identity. *See C.N. v. Wolf*, 410 F. Supp. 2d 894, 903 (C.D. Cal. 2005).



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DISCIPLINE AND ARRESTS

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RIGHTS OF PREGNANT STUDENTS

Schools are prohibited from excluding pregnant students and students with children under Title IX of the Education Amendments of 1972. This means that schools must also ensure that pregnant students or students with children have access to educational instruction, school activities, and reasonable accommodations, to the same extent that students with temporary medical conditions are given access, including the ability to make up missed classwork and learn in a safe, nonjudgmental environment. Schools are also not allowed to punish students who choose to terminate a pregnancy or to reveal a student's private medical information.



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Dr. Keith Perrigan
Bristol
220 Lee Street
Bristol, VA 24201

RE: Students' Rights Reminder for the 2019-2020 Academic Year

Dear Superintendent,

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Discipline: The intimate relationships of LGBTQ students must be treated with equal dignity as those of heterosexual students. Policies that prohibit same-sex couples or dates from attending prom, homecoming, or other dance functions violates students’ rights under Title IX of the Education Amendments of 1972, the Equal Protection Clause of the U.S. Constitution, and the Bill of Rights of the Virginia Constitution. LGBTQ students should not be punished more severely than heterosexual students for similar behavior, including for displays of affection.

LGBTQ Student Organizations: Students interested in forming a student organization, typically called a gay-straight alliance (“GSA”), are to be treated the same as students forming any other noncurricular organization or club. *See, e.g., 20 U.S.C. § 4071(a)* (if a school allows any noncurricular student group to meet, it cannot deny other groups the same access based on the content of their interest); *Gay All. of Students v. Matthews*, 544 F.2d 162 (4th Cir. 1976).

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DISCIPLINE AND ARRESTS

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Corporal Punishment: Corporal or physical punishment of students is strictly prohibited by Virginia law. *See* Va. Code § 22.1-279.1.

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Students with disabilities are also provided with protections under Section 504 of the Rehabilitation Act of 1974 (“Section 504”) and Title II of the Americans with Disabilities Act (“ADA”). Section 504 and the ADA prohibit discrimination against students with disabilities. This means that schools are prohibited by federal law from denying students with disabilities equal access to academic courses, field trips, extracurricular activities, school technology, and health services. School officials also have a duty to ensure that students with disabilities are not being discriminated against by being denied necessary accommodations. Restricting access to educational activities and opportunities, ignoring harassment and bullying, and failing to train staff on compliance with these laws is also prohibited under Section 504 and the ADA. *See also* Va. Code § 22.1-213 *et seq.*

RIGHTS OF IMMIGRANT STUDENTS

Schools cannot discriminate against students on the basis of race, color, or national origin. This includes discriminating against students on the basis of their immigration status. Undocumented students have a right to a free public education in your school district regardless of their immigration status, and schools cannot deny students of this right. *See, e.g., Plyler v. Doe*, 457 U.S. 202 (1982). Likewise, schools are not permitted to deny enrollment to a student based on their undocumented status; treat a student differently to determine residency; make inquiries of students or parents that may expose their undocumented status; require social security numbers from parents or students for purposes of enrollment; or engage in any other practices which may chill the right of access to school. Schools cannot turn away students with limited English proficiency; they must be provided with language instruction. *See, e.g., Lau v. Nichols*, 414 U.S. 563 (1974).

School officials should not allow immigration enforcement actions on school grounds without a judicial warrant based on probable cause that a criminal violation of the immigration laws has occurred. Schools should not call immigration authorities on students or consent to any immigration enforcement on school grounds without a criminal warrant. There is no state law requiring any state or local official to contact immigration officials nor any state or federal law prohibiting adoption of a policy that protects students and teachers from immigration action in the absence of a judicial criminal warrant.

RIGHTS OF PREGNANT STUDENTS

Schools are prohibited from excluding pregnant students and students with children under Title IX of the Education Amendments of 1972. This means that schools must also ensure that pregnant students or students with children have access to educational instruction, school activities, and reasonable accommodations, to the same extent that students with temporary medical conditions are given access, including the ability to make up missed classwork and learn in a safe, nonjudgmental environment. Schools are also not allowed to punish students who choose to terminate a pregnancy or to reveal a student's private medical information.



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Dr. Kristy Somerville-Midgette
Brunswick County
1718 Farmer's Field Road
Lawrenceville, VA 23868

RE: Students' Rights Reminder for the 2019-2020 Academic Year

Dear Superintendent,

As our communities prepare for the new academic year and students head back to school, it is important to be aware of the key issues affecting Virginia's students and their rights. Being aware of students' rights under state and federal law can help school officials avoid any potential legal complications and contribute to a positive learning environment that will allow each student to thrive.



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Federal and state laws afford children enrolled in school protection from discrimination and harassment based on race, color, religion, sex, national origin, or disability. Schools are responsible for ensuring these rights are protected and for promoting a safe school atmosphere. Additionally, schools are responsible for ensuring that students' right to free speech is respected and that the freedom to practice their religion—or no religion at all— is upheld.

Summarized below you will find information regarding: student speech rights; the Pledge of Allegiance; censorship; religious beliefs and accommodations; the rights of students who identify as LGBTQ; discipline and arrests; the rights of students with disabilities; the rights of students who are immigrants; and the rights of students who are pregnant.

We hope this information will help your school district understand the rights of students in schools and guide you in taking actions that ensure student rights are protected in a safe and supportive environment. Please do not hesitate to contact the ACLU of Virginia if you have any questions about these issues or if we can be of any assistance to you in evaluating and formulating school policy on any of these matters. We can be reached at (804) 644-8022 or acluva@acluva.org.

Very truly yours,

A handwritten signature in blue ink, which appears to read "Claire G. Gastañaga". The signature is fluid and cursive.

Claire G. Gastañaga
Executive Director



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STUDENT SPEECH RIGHTS

The First Amendment ensures that students cannot be punished for exercising free speech rights, even if administrators do not approve of their message. In the landmark Supreme Court case *Tinker v. Des Moines Independent Community School District*, the ACLU successfully challenged a school district's decision to suspend three students for wearing armbands in protest of the Vietnam War. 393 U.S. 503 (1969). The court declared that students and teachers do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." *Id.* at 506. Over the years, the ACLU has also successfully defended the right of students to wear an anti-abortion armband, a pro-LGBTQ t-shirt, and shirts critical of political figures. Schools may not discipline students for expressing an idea or political viewpoint in class or during school activities, as long as it does not cause a substantial disruption to the school environment.

It is true that the constitutional rights of students in public school are not the same as those of adults exercising First Amendment rights on public streets. Students' speech rights may be limited by reasonable time, place, and manner restrictions because of the unique characteristics of the school environment. A school may limit student speech, for example, through reasonable school-wide policies against cyberbullying. Additionally, schools may prohibit vulgar or offensive speech that is inconsistent with the "fundamental values of public school education." *Bethel Sch. Dist. No. 43 v. Fraser*, 478 U.S. 675, 685-86 (1986).

School officials should take care, however, not to define peaceful assembly as behavior that causes a substantial disruption to school activities. If students engage in a walkout, school officials may choose to discipline students for missing class but may not engage in harsher punishment because of the message or political nature of the action. School officials must not draw distinctions based on the content of a student's speech or expressive activity in imposing discipline.

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Schools cannot punish students for refusing to salute the flag or say the Pledge of Allegiance. *W.Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624 (1943); *Sherman v. Comm. Consol. Sch. Dist. 21*, 980 F.2d 437 (7th Cir. 1992). School officials also cannot force students to stand during the Pledge of Allegiance or leave the room if a student refuses to recite the Pledge. *See* Va. Code § 22.1-202(C) ("[N]o student shall be compelled to recite the Pledge if he, his parent or legal guardian objects on religious, philosophical or other grounds to his participating in this exercise.")

CENSORSHIP

Books: Banning books, removing books and materials from a classroom or library, or otherwise making it difficult for students to read a broad array of literature limits intellectual freedom. Making books and ideas unavailable based on their content or viewpoint or taking books out of schools because they are controversial, unpopular, or offensive, may violate the First Amendment. *See, e.g., Bd. of Educ. v. Pico*, 457 U.S. 853 (1982). Courts view school libraries as the main place where students exercise their freedom "to inquire, to study and to evaluate, to gain new maturity and understanding." *Id.* at 868.

Student Publications: Schools may review and control the content of school sponsored student publications including student newspapers, yearbooks, literary magazines, on-campus videos, and radio broadcasts. But schools cannot control student publications that are not sponsored or funded by the school, not done as part of a class or school project, or that are done on a student’s own time with their own resources. *See, e.g., Burt v. Barker*, 861 F.2d 1149 (9th Cir. 1988); *Fujishima v. Bd. of Ed.*, 160 F.2d 1355 (7th Cir. 1972); *Eisner v. Stanford Bd. of Ed.*, 440 F.2d 803 (2d Cir. 1971).

RELIGIOUS BELIEFS AND ACCOMMODATIONS

Free Exercise Clause: Under the First Amendment’s Free Exercise Clause, students have the right to worship as they see fit, with only limited restrictions. This means that while at school, students are free to practice their religion or nonreligion and to express themselves religiously without interference by school officials. Students may, for example, wear religious attire or clothing with religious messaging to school; post religious messages or images on their lockers; or bring religious materials, including religious texts or objects, to school. School officials may not, for instance, require students to remove their hijab, yarmulke, or other head covering, as it substantially burdens the practice of the student’s religion. *See, e.g., Va. Code § 22.1-203.1 et seq.; VIRGINIA STATE BOARD OF EDUCATION, GUIDELINES CONCERNING RELIGIOUS ACTIVITY IN THE PUBLIC SCHOOLS* (1995).

Establishment Clause: Under the First Amendment’s Establishment Clause, school officials cannot favor one religion over another or favor religion over nonbelief. In practice, this means that school officials and teachers cannot conduct prayer or bible-reading sessions, organize or participate in student-led prayer, or hold a prayer at graduation or sporting events, even when participation is voluntary. *See, e.g., Abington Sch. Dist. v. Schempp*, 374 U.S. 203 (1963); *Engel v. Vitale*, 370 U.S. 421 (1962); *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 308 (2000); *Lee v. Weisman*, 505 U.S. 577 (1992). Teachers cannot lead students in devotional activities or encourage student participation in religious activity before or after school, during class, or at school-sponsored activities. In fact, in the public-school context, the Supreme Court has invalidated almost every instance of school- or teacher-sponsored religious expression. Under Virginia law, school boards are permitted to establish a daily observance of one minute of silence, but the school board must be careful to ensure that its policy has secular justifications and is not merely a pretense to encourage prayer. *See, e.g., Va. Code § 22.1-203; VIRGINIA STATE BOARD OF EDUCATION, GUIDELINES CONCERNING RELIGIOUS ACTIVITY IN THE PUBLIC SCHOOLS* (1995).

RIGHTS OF LGBTQ STUDENTS

Cultivating a Safe Environment: Bullying of lesbian, gay, bisexual, transgender, and queer (“LGBTQ”) students has been documented as pervasive at many schools and is all too often ignored, or even encouraged, by school officials. LGBTQ students have a right to live their authentic lives and express themselves at school. Students have a right to be out of the closet at school, and conversely, public schools are not allowed to “out” students publicly. School officials and administrators must ensure they are creating a safe learning environment and protecting LGBTQ students from bullying and harassment. *See, e.g., Title IX, 20 U.S.C. § 1681* (schools may be liable if they act with deliberate indifference in failing to protect students from severe harassment on the basis of sex).



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Mrs. Melanie L. Hibbitts
Buchanan County
1176 Booth Branch
Grundy, VA 24614

RE: Students' Rights Reminder for the 2019-2020 Academic Year

Dear Superintendent,

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Student Publications: Schools may review and control the content of school sponsored student publications including student newspapers, yearbooks, literary magazines, on-campus videos, and radio broadcasts. But schools cannot control student publications that are not sponsored or funded by the school, not done as part of a class or school project, or that are done on a student’s own time with their own resources. *See, e.g., Burt v. Barker*, 861 F.2d 1149 (9th Cir. 1988); *Fujishima v. Bd. of Ed.*, 160 F.2d 1355 (7th Cir. 1972); *Eisner v. Stanford Bd. of Ed.*, 440 F.2d 803 (2d Cir. 1971).

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Cultivating a Safe Environment: Bullying of lesbian, gay, bisexual, transgender, and queer (“LGBTQ”) students has been documented as pervasive at many schools and is all too often ignored, or even encouraged, by school officials. LGBTQ students have a right to live their authentic lives and express themselves at school. Students have a right to be out of the closet at school, and conversely, public schools are not allowed to “out” students publicly. School officials and administrators must ensure they are creating a safe learning environment and protecting LGBTQ students from bullying and harassment. *See, e.g., Title IX, 20 U.S.C. § 1681* (schools may be liable if they act with deliberate indifference in failing to protect students from severe harassment on the basis of sex).



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Gender Markers, Pronouns, and Student Records: Students should be addressed using their preferred names and pronouns. Refusing to do so, or refusing to update the gender markers on a student’s records when provided with appropriate documentation, may be considered a form of sex-based discrimination under federal law. *See Grimm v. Gloucester County Sch. Bd.*, Civil No. 4:15-cv-52, 2019 U.S. Dist. Lexis 138246 (E.D. Va. Aug. 9, 2019). Likewise, a student’s right to privacy includes a student’s sexual orientation or gender identity. It is against the law for school officials to disclose or compel students to disclose this information, even if the student appears open about their sexual orientation or gender identity. *See C.N. v. Wolf*, 410 F. Supp. 2d 894, 903 (C.D. Cal. 2005).



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DISCIPLINE AND ARRESTS

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Due Process: The U.S. Constitution requires that students receive due process before disciplinary measures are imposed. This means that school officials must follow certain procedures before they can suspend or expel students from school. Students are generally entitled to receive notice prior to any suspension or expulsion. The notice must include the facts concerning the suspension or expulsion, and the basis for any accusations. The notice must also provide students an opportunity to explain their side. *See, e.g., Goss v. Lopez*, 419 U.S. 565 (1975). For Virginia’s specific procedural requirements, see Va. Code § 22.1-276.01 *et seq.*

Corporal Punishment: Corporal or physical punishment of students is strictly prohibited by Virginia law. *See* Va. Code § 22.1-279.1.

School Resource Officers: School Resource Officers (“SROs”) can protect students from outside danger, but often punish minor behaviors through ticketing and arrests. Law enforcement intervention should typically be a last resort for minor violations best handled by schools as discipline issues. For additional resources on how to limit disproportionate school-based arrests or referrals to law enforcement, visit the Model Guidance for Positive, Preventative Code of Student Conduct Policy and Alternatives to Suspension, available at http://www.doe.virginia.gov/support/student_conduct/index.shtml.



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Students with disabilities are also provided with protections under Section 504 of the Rehabilitation Act of 1974 (“Section 504”) and Title II of the Americans with Disabilities Act (“ADA”). Section 504 and the ADA prohibit discrimination against students with disabilities. This means that schools are prohibited by federal law from denying students with disabilities equal access to academic courses, field trips, extracurricular activities, school technology, and health services. School officials also have a duty to ensure that students with disabilities are not being discriminated against by being denied necessary accommodations. Restricting access to educational activities and opportunities, ignoring harassment and bullying, and failing to train staff on compliance with these laws is also prohibited under Section 504 and the ADA. *See also* Va. Code § 22.1-213 *et seq.*

RIGHTS OF IMMIGRANT STUDENTS

Schools cannot discriminate against students on the basis of race, color, or national origin. This includes discriminating against students on the basis of their immigration status. Undocumented students have a right to a free public education in your school district regardless of their immigration status, and schools cannot deny students of this right. *See, e.g., Plyler v. Doe*, 457 U.S. 202 (1982). Likewise, schools are not permitted to deny enrollment to a student based on their undocumented status; treat a student differently to determine residency; make inquiries of students or parents that may expose their undocumented status; require social security numbers from parents or students for purposes of enrollment; or engage in any other practices which may chill the right of access to school. Schools cannot turn away students with limited English proficiency; they must be provided with language instruction. *See, e.g., Lau v. Nichols*, 414 U.S. 563 (1974).

School officials should not allow immigration enforcement actions on school grounds without a judicial warrant based on probable cause that a criminal violation of the immigration laws has occurred. Schools should not call immigration authorities on students or consent to any immigration enforcement on school grounds without a criminal warrant. There is no state law requiring any state or local official to contact immigration officials nor any state or federal law prohibiting adoption of a policy that protects students and teachers from immigration action in the absence of a judicial criminal warrant.

RIGHTS OF PREGNANT STUDENTS

Schools are prohibited from excluding pregnant students and students with children under Title IX of the Education Amendments of 1972. This means that schools must also ensure that pregnant students or students with children have access to educational instruction, school activities, and reasonable accommodations, to the same extent that students with temporary medical conditions are given access, including the ability to make up missed classwork and learn in a safe, nonjudgmental environment. Schools are also not allowed to punish students who choose to terminate a pregnancy or to reveal a student's private medical information.



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Dr. Daisy M. Hicks
Buckingham County
15595 West James Anderson Rd.
Buckingham, VA 23921

RE: Students' Rights Reminder for the 2019-2020 Academic Year

Dear Superintendent,

As our communities prepare for the new academic year and students head back to school, it is important to be aware of the key issues affecting Virginia's students and their rights. Being aware of students' rights under state and federal law can help school officials avoid any potential legal complications and contribute to a positive learning environment that will allow each student to thrive.



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Federal and state laws afford children enrolled in school protection from discrimination and harassment based on race, color, religion, sex, national origin, or disability. Schools are responsible for ensuring these rights are protected and for promoting a safe school atmosphere. Additionally, schools are responsible for ensuring that students' right to free speech is respected and that the freedom to practice their religion—or no religion at all— is upheld.

Summarized below you will find information regarding: student speech rights; the Pledge of Allegiance; censorship; religious beliefs and accommodations; the rights of students who identify as LGBTQ; discipline and arrests; the rights of students with disabilities; the rights of students who are immigrants; and the rights of students who are pregnant.

We hope this information will help your school district understand the rights of students in schools and guide you in taking actions that ensure student rights are protected in a safe and supportive environment. Please do not hesitate to contact the ACLU of Virginia if you have any questions about these issues or if we can be of any assistance to you in evaluating and formulating school policy on any of these matters. We can be reached at (804) 644-8022 or acluva@acluva.org.

Very truly yours,

A handwritten signature in blue ink, which appears to read "Claire G. Gastañaga". The signature is fluid and cursive.

Claire G. Gastañaga
Executive Director



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STUDENT SPEECH RIGHTS

The First Amendment ensures that students cannot be punished for exercising free speech rights, even if administrators do not approve of their message. In the landmark Supreme Court case *Tinker v. Des Moines Independent Community School District*, the ACLU successfully challenged a school district's decision to suspend three students for wearing armbands in protest of the Vietnam War. 393 U.S. 503 (1969). The court declared that students and teachers do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." *Id.* at 506. Over the years, the ACLU has also successfully defended the right of students to wear an anti-abortion armband, a pro-LGBTQ t-shirt, and shirts critical of political figures. Schools may not discipline students for expressing an idea or political viewpoint in class or during school activities, as long as it does not cause a substantial disruption to the school environment.

It is true that the constitutional rights of students in public school are not the same as those of adults exercising First Amendment rights on public streets. Students' speech rights may be limited by reasonable time, place, and manner restrictions because of the unique characteristics of the school environment. A school may limit student speech, for example, through reasonable school-wide policies against cyberbullying. Additionally, schools may prohibit vulgar or offensive speech that is inconsistent with the "fundamental values of public school education." *Bethel Sch. Dist. No. 43 v. Fraser*, 478 U.S. 675, 685-86 (1986).

School officials should take care, however, not to define peaceful assembly as behavior that causes a substantial disruption to school activities. If students engage in a walkout, school officials may choose to discipline students for missing class but may not engage in harsher punishment because of the message or political nature of the action. School officials must not draw distinctions based on the content of a student's speech or expressive activity in imposing discipline.

PLEDGE OF ALLEGIANCE

Schools cannot punish students for refusing to salute the flag or say the Pledge of Allegiance. *W.Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624 (1943); *Sherman v. Comm. Consol. Sch. Dist. 21*, 980 F.2d 437 (7th Cir. 1992). School officials also cannot force students to stand during the Pledge of Allegiance or leave the room if a student refuses to recite the Pledge. *See* Va. Code § 22.1-202(C) ("[N]o student shall be compelled to recite the Pledge if he, his parent or legal guardian objects on religious, philosophical or other grounds to his participating in this exercise.")

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Dr. John Keeler
Buena Vista
2329 Chestnut Ave. Suite A
Buena Vista, VA 24416

RE: Students' Rights Reminder for the 2019-2020 Academic Year

Dear Superintendent,

As our communities prepare for the new academic year and students head back to school, it is important to be aware of the key issues affecting Virginia's students and their rights. Being aware of students' rights under state and federal law can help school officials avoid any potential legal complications and contribute to a positive learning environment that will allow each student to thrive.



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Summarized below you will find information regarding: student speech rights; the Pledge of Allegiance; censorship; religious beliefs and accommodations; the rights of students who identify as LGBTQ; discipline and arrests; the rights of students with disabilities; the rights of students who are immigrants; and the rights of students who are pregnant.

We hope this information will help your school district understand the rights of students in schools and guide you in taking actions that ensure student rights are protected in a safe and supportive environment. Please do not hesitate to contact the ACLU of Virginia if you have any questions about these issues or if we can be of any assistance to you in evaluating and formulating school policy on any of these matters. We can be reached at (804) 644-8022 or acluva@acluva.org.

Very truly yours,

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Claire G. Gastañaga
Executive Director



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STUDENT SPEECH RIGHTS

The First Amendment ensures that students cannot be punished for exercising free speech rights, even if administrators do not approve of their message. In the landmark Supreme Court case *Tinker v. Des Moines Independent Community School District*, the ACLU successfully challenged a school district's decision to suspend three students for wearing armbands in protest of the Vietnam War. 393 U.S. 503 (1969). The court declared that students and teachers do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." *Id.* at 506. Over the years, the ACLU has also successfully defended the right of students to wear an anti-abortion armband, a pro-LGBTQ t-shirt, and shirts critical of political figures. Schools may not discipline students for expressing an idea or political viewpoint in class or during school activities, as long as it does not cause a substantial disruption to the school environment.

It is true that the constitutional rights of students in public school are not the same as those of adults exercising First Amendment rights on public streets. Students' speech rights may be limited by reasonable time, place, and manner restrictions because of the unique characteristics of the school environment. A school may limit student speech, for example, through reasonable school-wide policies against cyberbullying. Additionally, schools may prohibit vulgar or offensive speech that is inconsistent with the "fundamental values of public school education." *Bethel Sch. Dist. No. 43 v. Fraser*, 478 U.S. 675, 685-86 (1986).

School officials should take care, however, not to define peaceful assembly as behavior that causes a substantial disruption to school activities. If students engage in a walkout, school officials may choose to discipline students for missing class but may not engage in harsher punishment because of the message or political nature of the action. School officials must not draw distinctions based on the content of a student's speech or expressive activity in imposing discipline.

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Schools cannot punish students for refusing to salute the flag or say the Pledge of Allegiance. *W.Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624 (1943); *Sherman v. Comm. Consol. Sch. Dist. 21*, 980 F.2d 437 (7th Cir. 1992). School officials also cannot force students to stand during the Pledge of Allegiance or leave the room if a student refuses to recite the Pledge. *See* Va. Code § 22.1-202(C) ("[N]o student shall be compelled to recite the Pledge if he, his parent or legal guardian objects on religious, philosophical or other grounds to his participating in this exercise.")

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RELIGIOUS BELIEFS AND ACCOMMODATIONS

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RIGHTS OF LGBTQ STUDENTS

Cultivating a Safe Environment: Bullying of lesbian, gay, bisexual, transgender, and queer (“LGBTQ”) students has been documented as pervasive at many schools and is all too often ignored, or even encouraged, by school officials. LGBTQ students have a right to live their authentic lives and express themselves at school. Students have a right to be out of the closet at school, and conversely, public schools are not allowed to “out” students publicly. School officials and administrators must ensure they are creating a safe learning environment and protecting LGBTQ students from bullying and harassment. *See, e.g., Title IX, 20 U.S.C. § 1681* (schools may be liable if they act with deliberate indifference in failing to protect students from severe harassment on the basis of sex).



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LGBTQ Student Organizations: Students interested in forming a student organization, typically called a gay-straight alliance (“GSA”), are to be treated the same as students forming any other noncurricular organization or club. *See, e.g., 20 U.S.C. § 4071(a)* (if a school allows any noncurricular student group to meet, it cannot deny other groups the same access based on the content of their interest); *Gay All. of Students v. Matthews*, 544 F.2d 162 (4th Cir. 1976).

Gender Markers, Pronouns, and Student Records: Students should be addressed using their preferred names and pronouns. Refusing to do so, or refusing to update the gender markers on a student’s records when provided with appropriate documentation, may be considered a form of sex-based discrimination under federal law. *See Grimm v. Gloucester County Sch. Bd.*, Civil No. 4:15-cv-52, 2019 U.S. Dist. Lexis 138246 (E.D. Va. Aug. 9, 2019). Likewise, a student’s right to privacy includes a student’s sexual orientation or gender identity. It is against the law for school officials to disclose or compel students to disclose this information, even if the student appears open about their sexual orientation or gender identity. *See C.N. v. Wolf*, 410 F. Supp. 2d 894, 903 (C.D. Cal. 2005).



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DISCIPLINE AND ARRESTS

Generally: School discipline policies and practices should be fair and equitable and should prioritize prevention and intervention rather than harsh punishments like suspension, expulsion, and referral to law enforcement. The goal of discipline should be to teach appropriate behaviors and minimize the time students spend out of class. In Spring 2015, the Center for Public Integrity released a study finding that Virginia led the country in schools referring students to law enforcement, a phenomenon known as the “school-to-prison pipeline.” Additional studies conducted by the Virginia Department of Education found that African American students and students with disabilities were disproportionately represented in both suspensions and referrals to law enforcement throughout Virginia schools. These disparities open up school districts to potential legal challenges for race and disability discrimination under federal civil rights laws. *See, e.g.*, Complaint against Richmond Public Schools, available at <https://acluva.org/en/cases/equal-treatment-richmond-public-school-students>. In order to avoid potential legal problems, and to provide a more equitable school environment, school officials should reevaluate and revise their current discipline policies and practices to create a more positive and preventative approach to student conduct. The Virginia Board of Education has provided a blueprint for schools to use in revising their outdated practices – the Model Guidance for Positive, Preventative Code of Student Conduct Policy and Alternatives to Suspension, available at http://www.doe.virginia.gov/support/student_conduct/index.shtml.

Due Process: The U.S. Constitution requires that students receive due process before disciplinary measures are imposed. This means that school officials must follow certain procedures before they can suspend or expel students from school. Students are generally entitled to receive notice prior to any suspension or expulsion. The notice must include the facts concerning the suspension or expulsion, and the basis for any accusations. The notice must also provide students an opportunity to explain their side. *See, e.g., Goss v. Lopez*, 419 U.S. 565 (1975). For Virginia’s specific procedural requirements, see Va. Code § 22.1-276.01 *et seq.*

Corporal Punishment: Corporal or physical punishment of students is strictly prohibited by Virginia law. *See* Va. Code § 22.1-279.1.

School Resource Officers: School Resource Officers (“SROs”) can protect students from outside danger, but often punish minor behaviors through ticketing and arrests. Law enforcement intervention should typically be a last resort for minor violations best handled by schools as discipline issues. For additional resources on how to limit disproportionate school-based arrests or referrals to law enforcement, visit the Model Guidance for Positive, Preventative Code of Student Conduct Policy and Alternatives to Suspension, available at http://www.doe.virginia.gov/support/student_conduct/index.shtml.



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RIGHTS OF STUDENTS WITH DISABILITIES

Students with disabilities are provided legal protections under several federal laws. The Individuals with Disabilities Education Act (“IDEA”) requires that public schools provide eligible students with disabilities a “free, appropriate public education” in the least restrictive environment. *See* 20 U.S.C. § 1400 *et seq.* As part of the IDEA, schools must affirmatively locate, identify, and evaluate children in their district for special education and related services, a process known as “child find.” Parents may also request an evaluation at any time in writing or by speaking to a teacher or administrator, and the school district must respond to the parent’s request. Schools must educate students with disabilities in the least restrictive setting possible, with an emphasis on inclusion and integration in the regular education classroom where feasible. Additionally, students receiving special education services under the IDEA, as well as students suspected of being eligible to receive services, are entitled to certain protections and safeguards in the school discipline process. *See* 34 C.F.R. § 300.530 *et seq.*

Students with disabilities are also provided with protections under Section 504 of the Rehabilitation Act of 1974 (“Section 504”) and Title II of the Americans with Disabilities Act (“ADA”). Section 504 and the ADA prohibit discrimination against students with disabilities. This means that schools are prohibited by federal law from denying students with disabilities equal access to academic courses, field trips, extracurricular activities, school technology, and health services. School officials also have a duty to ensure that students with disabilities are not being discriminated against by being denied necessary accommodations. Restricting access to educational activities and opportunities, ignoring harassment and bullying, and failing to train staff on compliance with these laws is also prohibited under Section 504 and the ADA. *See also* Va. Code § 22.1-213 *et seq.*

RIGHTS OF IMMIGRANT STUDENTS

Schools cannot discriminate against students on the basis of race, color, or national origin. This includes discriminating against students on the basis of their immigration status. Undocumented students have a right to a free public education in your school district regardless of their immigration status, and schools cannot deny students of this right. *See, e.g., Plyler v. Doe*, 457 U.S. 202 (1982). Likewise, schools are not permitted to deny enrollment to a student based on their undocumented status; treat a student differently to determine residency; make inquiries of students or parents that may expose their undocumented status; require social security numbers from parents or students for purposes of enrollment; or engage in any other practices which may chill the right of access to school. Schools cannot turn away students with limited English proficiency; they must be provided with language instruction. *See, e.g., Lau v. Nichols*, 414 U.S. 563 (1974).

School officials should not allow immigration enforcement actions on school grounds without a judicial warrant based on probable cause that a criminal violation of the immigration laws has occurred. Schools should not call immigration authorities on students or consent to any immigration enforcement on school grounds without a criminal warrant. There is no state law requiring any state or local official to contact immigration officials nor any state or federal law prohibiting adoption of a policy that protects students and teachers from immigration action in the absence of a judicial criminal warrant.

RIGHTS OF PREGNANT STUDENTS

Schools are prohibited from excluding pregnant students and students with children under Title IX of the Education Amendments of 1972. This means that schools must also ensure that pregnant students or students with children have access to educational instruction, school activities, and reasonable accommodations, to the same extent that students with temporary medical conditions are given access, including the ability to make up missed classwork and learn in a safe, nonjudgmental environment. Schools are also not allowed to punish students who choose to terminate a pregnancy or to reveal a student's private medical information.



AMERICAN CIVIL LIBERTIES UNION
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Dr. Robert Johnson
Campbell County
P.O. Box 99
Rustburg, VA 24588

RE: Students' Rights Reminder for the 2019-2020 Academic Year

Dear Superintendent,

As our communities prepare for the new academic year and students head back to school, it is important to be aware of the key issues affecting Virginia's students and their rights. Being aware of students' rights under state and federal law can help school officials avoid any potential legal complications and contribute to a positive learning environment that will allow each student to thrive.



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RIGHTS OF STUDENTS WITH DISABILITIES

Students with disabilities are provided legal protections under several federal laws. The Individuals with Disabilities Education Act (“IDEA”) requires that public schools provide eligible students with disabilities a “free, appropriate public education” in the least restrictive environment. *See* 20 U.S.C. § 1400 *et seq.* As part of the IDEA, schools must affirmatively locate, identify, and evaluate children in their district for special education and related services, a process known as “child find.” Parents may also request an evaluation at any time in writing or by speaking to a teacher or administrator, and the school district must respond to the parent’s request. Schools must educate students with disabilities in the least restrictive setting possible, with an emphasis on inclusion and integration in the regular education classroom where feasible. Additionally, students receiving special education services under the IDEA, as well as students suspected of being eligible to receive services, are entitled to certain protections and safeguards in the school discipline process. *See* 34 C.F.R. § 300.530 *et seq.*

Students with disabilities are also provided with protections under Section 504 of the Rehabilitation Act of 1974 (“Section 504”) and Title II of the Americans with Disabilities Act (“ADA”). Section 504 and the ADA prohibit discrimination against students with disabilities. This means that schools are prohibited by federal law from denying students with disabilities equal access to academic courses, field trips, extracurricular activities, school technology, and health services. School officials also have a duty to ensure that students with disabilities are not being discriminated against by being denied necessary accommodations. Restricting access to educational activities and opportunities, ignoring harassment and bullying, and failing to train staff on compliance with these laws is also prohibited under Section 504 and the ADA. *See also* Va. Code § 22.1-213 *et seq.*

RIGHTS OF IMMIGRANT STUDENTS

Schools cannot discriminate against students on the basis of race, color, or national origin. This includes discriminating against students on the basis of their immigration status. Undocumented students have a right to a free public education in your school district regardless of their immigration status, and schools cannot deny students of this right. *See, e.g., Plyler v. Doe*, 457 U.S. 202 (1982). Likewise, schools are not permitted to deny enrollment to a student based on their undocumented status; treat a student differently to determine residency; make inquiries of students or parents that may expose their undocumented status; require social security numbers from parents or students for purposes of enrollment; or engage in any other practices which may chill the right of access to school. Schools cannot turn away students with limited English proficiency; they must be provided with language instruction. *See, e.g., Lau v. Nichols*, 414 U.S. 563 (1974).

School officials should not allow immigration enforcement actions on school grounds without a judicial warrant based on probable cause that a criminal violation of the immigration laws has occurred. Schools should not call immigration authorities on students or consent to any immigration enforcement on school grounds without a criminal warrant. There is no state law requiring any state or local official to contact immigration officials nor any state or federal law prohibiting adoption of a policy that protects students and teachers from immigration action in the absence of a judicial criminal warrant.

RIGHTS OF PREGNANT STUDENTS

Schools are prohibited from excluding pregnant students and students with children under Title IX of the Education Amendments of 1972. This means that schools must also ensure that pregnant students or students with children have access to educational instruction, school activities, and reasonable accommodations, to the same extent that students with temporary medical conditions are given access, including the ability to make up missed classwork and learn in a safe, nonjudgmental environment. Schools are also not allowed to punish students who choose to terminate a pregnancy or to reveal a student's private medical information.



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Dr. Sarah Calveric
Caroline County
16261 Richmond Turnpike
Bowling Green, VA 22427

RE: Students' Rights Reminder for the 2019-2020 Academic Year

Dear Superintendent,

As our communities prepare for the new academic year and students head back to school, it is important to be aware of the key issues affecting Virginia's students and their rights. Being aware of students' rights under state and federal law can help school officials avoid any potential legal complications and contribute to a positive learning environment that will allow each student to thrive.



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Federal and state laws afford children enrolled in school protection from discrimination and harassment based on race, color, religion, sex, national origin, or disability. Schools are responsible for ensuring these rights are protected and for promoting a safe school atmosphere. Additionally, schools are responsible for ensuring that students' right to free speech is respected and that the freedom to practice their religion—or no religion at all— is upheld.

Summarized below you will find information regarding: student speech rights; the Pledge of Allegiance; censorship; religious beliefs and accommodations; the rights of students who identify as LGBTQ; discipline and arrests; the rights of students with disabilities; the rights of students who are immigrants; and the rights of students who are pregnant.

We hope this information will help your school district understand the rights of students in schools and guide you in taking actions that ensure student rights are protected in a safe and supportive environment. Please do not hesitate to contact the ACLU of Virginia if you have any questions about these issues or if we can be of any assistance to you in evaluating and formulating school policy on any of these matters. We can be reached at (804) 644-8022 or acluva@acluva.org.

Very truly yours,

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Claire G. Gastañaga
Executive Director



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STUDENT SPEECH RIGHTS

The First Amendment ensures that students cannot be punished for exercising free speech rights, even if administrators do not approve of their message. In the landmark Supreme Court case *Tinker v. Des Moines Independent Community School District*, the ACLU successfully challenged a school district's decision to suspend three students for wearing armbands in protest of the Vietnam War. 393 U.S. 503 (1969). The court declared that students and teachers do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." *Id.* at 506. Over the years, the ACLU has also successfully defended the right of students to wear an anti-abortion armband, a pro-LGBTQ t-shirt, and shirts critical of political figures. Schools may not discipline students for expressing an idea or political viewpoint in class or during school activities, as long as it does not cause a substantial disruption to the school environment.

It is true that the constitutional rights of students in public school are not the same as those of adults exercising First Amendment rights on public streets. Students' speech rights may be limited by reasonable time, place, and manner restrictions because of the unique characteristics of the school environment. A school may limit student speech, for example, through reasonable school-wide policies against cyberbullying. Additionally, schools may prohibit vulgar or offensive speech that is inconsistent with the "fundamental values of public school education." *Bethel Sch. Dist. No. 43 v. Fraser*, 478 U.S. 675, 685-86 (1986).

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RELIGIOUS BELIEFS AND ACCOMMODATIONS

Free Exercise Clause: Under the First Amendment’s Free Exercise Clause, students have the right to worship as they see fit, with only limited restrictions. This means that while at school, students are free to practice their religion or nonreligion and to express themselves religiously without interference by school officials. Students may, for example, wear religious attire or clothing with religious messaging to school; post religious messages or images on their lockers; or bring religious materials, including religious texts or objects, to school. School officials may not, for instance, require students to remove their hijab, yarmulke, or other head covering, as it substantially burdens the practice of the student’s religion. *See, e.g., Va. Code § 22.1-203.1 et seq.; VIRGINIA STATE BOARD OF EDUCATION, GUIDELINES CONCERNING RELIGIOUS ACTIVITY IN THE PUBLIC SCHOOLS* (1995).

Establishment Clause: Under the First Amendment’s Establishment Clause, school officials cannot favor one religion over another or favor religion over nonbelief. In practice, this means that school officials and teachers cannot conduct prayer or bible-reading sessions, organize or participate in student-led prayer, or hold a prayer at graduation or sporting events, even when participation is voluntary. *See, e.g., Abington Sch. Dist. v. Schempp*, 374 U.S. 203 (1963); *Engel v. Vitale*, 370 U.S. 421 (1962); *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 308 (2000); *Lee v. Weisman*, 505 U.S. 577 (1992). Teachers cannot lead students in devotional activities or encourage student participation in religious activity before or after school, during class, or at school-sponsored activities. In fact, in the public-school context, the Supreme Court has invalidated almost every instance of school- or teacher-sponsored religious expression. Under Virginia law, school boards are permitted to establish a daily observance of one minute of silence, but the school board must be careful to ensure that its policy has secular justifications and is not merely a pretense to encourage prayer. *See, e.g., Va. Code § 22.1-203; VIRGINIA STATE BOARD OF EDUCATION, GUIDELINES CONCERNING RELIGIOUS ACTIVITY IN THE PUBLIC SCHOOLS* (1995).

RIGHTS OF LGBTQ STUDENTS

Cultivating a Safe Environment: Bullying of lesbian, gay, bisexual, transgender, and queer (“LGBTQ”) students has been documented as pervasive at many schools and is all too often ignored, or even encouraged, by school officials. LGBTQ students have a right to live their authentic lives and express themselves at school. Students have a right to be out of the closet at school, and conversely, public schools are not allowed to “out” students publicly. School officials and administrators must ensure they are creating a safe learning environment and protecting LGBTQ students from bullying and harassment. *See, e.g., Title IX, 20 U.S.C. § 1681* (schools may be liable if they act with deliberate indifference in failing to protect students from severe harassment on the basis of sex).



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Restrooms & Locker Rooms: Transgender students must be allowed to use the restroom facilities consistent with their gender identity. Schools cannot create policies that require transgender students to use restrooms or locker rooms that do not correspond with their gender identity, and schools may not create policies that require transgender students to use single-user facilities. *See Grimm v. Gloucester County Sch. Bd.*, Civil No. 4:15-cv-52, 2019 U.S. Dist. Lexis 138246 (E.D. Va. Aug. 9, 2019).

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Discipline: The intimate relationships of LGBTQ students must be treated with equal dignity as those of heterosexual students. Policies that prohibit same-sex couples or dates from attending prom, homecoming, or other dance functions violates students’ rights under Title IX of the Education Amendments of 1972, the Equal Protection Clause of the U.S. Constitution, and the Bill of Rights of the Virginia Constitution. LGBTQ students should not be punished more severely than heterosexual students for similar behavior, including for displays of affection.

LGBTQ Student Organizations: Students interested in forming a student organization, typically called a gay-straight alliance (“GSA”), are to be treated the same as students forming any other noncurricular organization or club. *See, e.g., 20 U.S.C. § 4071(a)* (if a school allows any noncurricular student group to meet, it cannot deny other groups the same access based on the content of their interest); *Gay All. of Students v. Matthews*, 544 F.2d 162 (4th Cir. 1976).

Gender Markers, Pronouns, and Student Records: Students should be addressed using their preferred names and pronouns. Refusing to do so, or refusing to update the gender markers on a student’s records when provided with appropriate documentation, may be considered a form of sex-based discrimination under federal law. *See Grimm v. Gloucester County Sch. Bd.*, Civil No. 4:15-cv-52, 2019 U.S. Dist. Lexis 138246 (E.D. Va. Aug. 9, 2019). Likewise, a student’s right to privacy includes a student’s sexual orientation or gender identity. It is against the law for school officials to disclose or compel students to disclose this information, even if the student appears open about their sexual orientation or gender identity. *See C.N. v. Wolf*, 410 F. Supp. 2d 894, 903 (C.D. Cal. 2005).



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DISCIPLINE AND ARRESTS

Generally: School discipline policies and practices should be fair and equitable and should prioritize prevention and intervention rather than harsh punishments like suspension, expulsion, and referral to law enforcement. The goal of discipline should be to teach appropriate behaviors and minimize the time students spend out of class. In Spring 2015, the Center for Public Integrity released a study finding that Virginia led the country in schools referring students to law enforcement, a phenomenon known as the “school-to-prison pipeline.” Additional studies conducted by the Virginia Department of Education found that African American students and students with disabilities were disproportionately represented in both suspensions and referrals to law enforcement throughout Virginia schools. These disparities open up school districts to potential legal challenges for race and disability discrimination under federal civil rights laws. *See, e.g.*, Complaint against Richmond Public Schools, available at <https://acluva.org/en/cases/equal-treatment-richmond-public-school-students>. In order to avoid potential legal problems, and to provide a more equitable school environment, school officials should reevaluate and revise their current discipline policies and practices to create a more positive and preventative approach to student conduct. The Virginia Board of Education has provided a blueprint for schools to use in revising their outdated practices – the Model Guidance for Positive, Preventative Code of Student Conduct Policy and Alternatives to Suspension, available at http://www.doe.virginia.gov/support/student_conduct/index.shtml.

Due Process: The U.S. Constitution requires that students receive due process before disciplinary measures are imposed. This means that school officials must follow certain procedures before they can suspend or expel students from school. Students are generally entitled to receive notice prior to any suspension or expulsion. The notice must include the facts concerning the suspension or expulsion, and the basis for any accusations. The notice must also provide students an opportunity to explain their side. *See, e.g., Goss v. Lopez*, 419 U.S. 565 (1975). For Virginia’s specific procedural requirements, see Va. Code § 22.1-276.01 *et seq.*

Corporal Punishment: Corporal or physical punishment of students is strictly prohibited by Virginia law. *See* Va. Code § 22.1-279.1.

School Resource Officers: School Resource Officers (“SROs”) can protect students from outside danger, but often punish minor behaviors through ticketing and arrests. Law enforcement intervention should typically be a last resort for minor violations best handled by schools as discipline issues. For additional resources on how to limit disproportionate school-based arrests or referrals to law enforcement, visit the Model Guidance for Positive, Preventative Code of Student Conduct Policy and Alternatives to Suspension, available at http://www.doe.virginia.gov/support/student_conduct/index.shtml.



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RIGHTS OF PREGNANT STUDENTS

Schools are prohibited from excluding pregnant students and students with children under Title IX of the Education Amendments of 1972. This means that schools must also ensure that pregnant students or students with children have access to educational instruction, school activities, and reasonable accommodations, to the same extent that students with temporary medical conditions are given access, including the ability to make up missed classwork and learn in a safe, nonjudgmental environment. Schools are also not allowed to punish students who choose to terminate a pregnancy or to reveal a student's private medical information.



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Dr. Shirley A. Perry
Carroll County
605-9 Pine St
Hillsville, VA 24343

RE: Students' Rights Reminder for the 2019-2020 Academic Year

Dear Superintendent,

As our communities prepare for the new academic year and students head back to school, it is important to be aware of the key issues affecting Virginia's students and their rights. Being aware of students' rights under state and federal law can help school officials avoid any potential legal complications and contribute to a positive learning environment that will allow each student to thrive.



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Summarized below you will find information regarding: student speech rights; the Pledge of Allegiance; censorship; religious beliefs and accommodations; the rights of students who identify as LGBTQ; discipline and arrests; the rights of students with disabilities; the rights of students who are immigrants; and the rights of students who are pregnant.

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Gender Markers, Pronouns, and Student Records: Students should be addressed using their preferred names and pronouns. Refusing to do so, or refusing to update the gender markers on a student’s records when provided with appropriate documentation, may be considered a form of sex-based discrimination under federal law. *See Grimm v. Gloucester County Sch. Bd.*, Civil No. 4:15-cv-52, 2019 U.S. Dist. Lexis 138246 (E.D. Va. Aug. 9, 2019). Likewise, a student’s right to privacy includes a student’s sexual orientation or gender identity. It is against the law for school officials to disclose or compel students to disclose this information, even if the student appears open about their sexual orientation or gender identity. *See C.N. v. Wolf*, 410 F. Supp. 2d 894, 903 (C.D. Cal. 2005).



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DISCIPLINE AND ARRESTS

Generally: School discipline policies and practices should be fair and equitable and should prioritize prevention and intervention rather than harsh punishments like suspension, expulsion, and referral to law enforcement. The goal of discipline should be to teach appropriate behaviors and minimize the time students spend out of class. In Spring 2015, the Center for Public Integrity released a study finding that Virginia led the country in schools referring students to law enforcement, a phenomenon known as the “school-to-prison pipeline.” Additional studies conducted by the Virginia Department of Education found that African American students and students with disabilities were disproportionately represented in both suspensions and referrals to law enforcement throughout Virginia schools. These disparities open up school districts to potential legal challenges for race and disability discrimination under federal civil rights laws. *See, e.g.*, Complaint against Richmond Public Schools, available at <https://acluva.org/en/cases/equal-treatment-richmond-public-school-students>. In order to avoid potential legal problems, and to provide a more equitable school environment, school officials should reevaluate and revise their current discipline policies and practices to create a more positive and preventative approach to student conduct. The Virginia Board of Education has provided a blueprint for schools to use in revising their outdated practices – the Model Guidance for Positive, Preventative Code of Student Conduct Policy and Alternatives to Suspension, available at http://www.doe.virginia.gov/support/student_conduct/index.shtml.

Due Process: The U.S. Constitution requires that students receive due process before disciplinary measures are imposed. This means that school officials must follow certain procedures before they can suspend or expel students from school. Students are generally entitled to receive notice prior to any suspension or expulsion. The notice must include the facts concerning the suspension or expulsion, and the basis for any accusations. The notice must also provide students an opportunity to explain their side. *See, e.g., Goss v. Lopez*, 419 U.S. 565 (1975). For Virginia’s specific procedural requirements, see Va. Code § 22.1-276.01 *et seq.*

Corporal Punishment: Corporal or physical punishment of students is strictly prohibited by Virginia law. *See* Va. Code § 22.1-279.1.

School Resource Officers: School Resource Officers (“SROs”) can protect students from outside danger, but often punish minor behaviors through ticketing and arrests. Law enforcement intervention should typically be a last resort for minor violations best handled by schools as discipline issues. For additional resources on how to limit disproportionate school-based arrests or referrals to law enforcement, visit the Model Guidance for Positive, Preventative Code of Student Conduct Policy and Alternatives to Suspension, available at http://www.doe.virginia.gov/support/student_conduct/index.shtml.



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RIGHTS OF STUDENTS WITH DISABILITIES

Students with disabilities are provided legal protections under several federal laws. The Individuals with Disabilities Education Act (“IDEA”) requires that public schools provide eligible students with disabilities a “free, appropriate public education” in the least restrictive environment. *See* 20 U.S.C. § 1400 *et seq.* As part of the IDEA, schools must affirmatively locate, identify, and evaluate children in their district for special education and related services, a process known as “child find.” Parents may also request an evaluation at any time in writing or by speaking to a teacher or administrator, and the school district must respond to the parent’s request. Schools must educate students with disabilities in the least restrictive setting possible, with an emphasis on inclusion and integration in the regular education classroom where feasible. Additionally, students receiving special education services under the IDEA, as well as students suspected of being eligible to receive services, are entitled to certain protections and safeguards in the school discipline process. *See* 34 C.F.R. § 300.530 *et seq.*

Students with disabilities are also provided with protections under Section 504 of the Rehabilitation Act of 1974 (“Section 504”) and Title II of the Americans with Disabilities Act (“ADA”). Section 504 and the ADA prohibit discrimination against students with disabilities. This means that schools are prohibited by federal law from denying students with disabilities equal access to academic courses, field trips, extracurricular activities, school technology, and health services. School officials also have a duty to ensure that students with disabilities are not being discriminated against by being denied necessary accommodations. Restricting access to educational activities and opportunities, ignoring harassment and bullying, and failing to train staff on compliance with these laws is also prohibited under Section 504 and the ADA. *See also* Va. Code § 22.1-213 *et seq.*

RIGHTS OF IMMIGRANT STUDENTS

Schools cannot discriminate against students on the basis of race, color, or national origin. This includes discriminating against students on the basis of their immigration status. Undocumented students have a right to a free public education in your school district regardless of their immigration status, and schools cannot deny students of this right. *See, e.g., Plyler v. Doe*, 457 U.S. 202 (1982). Likewise, schools are not permitted to deny enrollment to a student based on their undocumented status; treat a student differently to determine residency; make inquiries of students or parents that may expose their undocumented status; require social security numbers from parents or students for purposes of enrollment; or engage in any other practices which may chill the right of access to school. Schools cannot turn away students with limited English proficiency; they must be provided with language instruction. *See, e.g., Lau v. Nichols*, 414 U.S. 563 (1974).

School officials should not allow immigration enforcement actions on school grounds without a judicial warrant based on probable cause that a criminal violation of the immigration laws has occurred. Schools should not call immigration authorities on students or consent to any immigration enforcement on school grounds without a criminal warrant. There is no state law requiring any state or local official to contact immigration officials nor any state or federal law prohibiting adoption of a policy that protects students and teachers from immigration action in the absence of a judicial criminal warrant.

RIGHTS OF PREGNANT STUDENTS

Schools are prohibited from excluding pregnant students and students with children under Title IX of the Education Amendments of 1972. This means that schools must also ensure that pregnant students or students with children have access to educational instruction, school activities, and reasonable accommodations, to the same extent that students with temporary medical conditions are given access, including the ability to make up missed classwork and learn in a safe, nonjudgmental environment. Schools are also not allowed to punish students who choose to terminate a pregnancy or to reveal a student's private medical information.



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Dr. David W. Gaston
Charles City County
10035 Courthouse Rd
Charles City, VA 23030

RE: Students' Rights Reminder for the 2019-2020 Academic Year

Dear Superintendent,

As our communities prepare for the new academic year and students head back to school, it is important to be aware of the key issues affecting Virginia's students and their rights. Being aware of students' rights under state and federal law can help school officials avoid any potential legal complications and contribute to a positive learning environment that will allow each student to thrive.



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Federal and state laws afford children enrolled in school protection from discrimination and harassment based on race, color, religion, sex, national origin, or disability. Schools are responsible for ensuring these rights are protected and for promoting a safe school atmosphere. Additionally, schools are responsible for ensuring that students' right to free speech is respected and that the freedom to practice their religion—or no religion at all— is upheld.

Summarized below you will find information regarding: student speech rights; the Pledge of Allegiance; censorship; religious beliefs and accommodations; the rights of students who identify as LGBTQ; discipline and arrests; the rights of students with disabilities; the rights of students who are immigrants; and the rights of students who are pregnant.

We hope this information will help your school district understand the rights of students in schools and guide you in taking actions that ensure student rights are protected in a safe and supportive environment. Please do not hesitate to contact the ACLU of Virginia if you have any questions about these issues or if we can be of any assistance to you in evaluating and formulating school policy on any of these matters. We can be reached at (804) 644-8022 or acluva@acluva.org.

Very truly yours,

A handwritten signature in blue ink, which appears to read "Claire G. Gastañaga". The signature is fluid and cursive.

Claire G. Gastañaga
Executive Director



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STUDENT SPEECH RIGHTS

The First Amendment ensures that students cannot be punished for exercising free speech rights, even if administrators do not approve of their message. In the landmark Supreme Court case *Tinker v. Des Moines Independent Community School District*, the ACLU successfully challenged a school district's decision to suspend three students for wearing armbands in protest of the Vietnam War. 393 U.S. 503 (1969). The court declared that students and teachers do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." *Id.* at 506. Over the years, the ACLU has also successfully defended the right of students to wear an anti-abortion armband, a pro-LGBTQ t-shirt, and shirts critical of political figures. Schools may not discipline students for expressing an idea or political viewpoint in class or during school activities, as long as it does not cause a substantial disruption to the school environment.

It is true that the constitutional rights of students in public school are not the same as those of adults exercising First Amendment rights on public streets. Students' speech rights may be limited by reasonable time, place, and manner restrictions because of the unique characteristics of the school environment. A school may limit student speech, for example, through reasonable school-wide policies against cyberbullying. Additionally, schools may prohibit vulgar or offensive speech that is inconsistent with the "fundamental values of public school education." *Bethel Sch. Dist. No. 43 v. Fraser*, 478 U.S. 675, 685-86 (1986).

School officials should take care, however, not to define peaceful assembly as behavior that causes a substantial disruption to school activities. If students engage in a walkout, school officials may choose to discipline students for missing class but may not engage in harsher punishment because of the message or political nature of the action. School officials must not draw distinctions based on the content of a student's speech or expressive activity in imposing discipline.

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Schools cannot punish students for refusing to salute the flag or say the Pledge of Allegiance. *W.Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624 (1943); *Sherman v. Comm. Consol. Sch. Dist. 21*, 980 F.2d 437 (7th Cir. 1992). School officials also cannot force students to stand during the Pledge of Allegiance or leave the room if a student refuses to recite the Pledge. *See* Va. Code § 22.1-202(C) ("[N]o student shall be compelled to recite the Pledge if he, his parent or legal guardian objects on religious, philosophical or other grounds to his participating in this exercise.")

CENSORSHIP

Books: Banning books, removing books and materials from a classroom or library, or otherwise making it difficult for students to read a broad array of literature limits intellectual freedom. Making books and ideas unavailable based on their content or viewpoint or taking books out of schools because they are controversial, unpopular, or offensive, may violate the First Amendment. *See, e.g., Bd. of Educ. v. Pico*, 457 U.S. 853 (1982). Courts view school libraries as the main place where students exercise their freedom "to inquire, to study and to evaluate, to gain new maturity and understanding." *Id.* at 868.

Student Publications: Schools may review and control the content of school sponsored student publications including student newspapers, yearbooks, literary magazines, on-campus videos, and radio broadcasts. But schools cannot control student publications that are not sponsored or funded by the school, not done as part of a class or school project, or that are done on a student’s own time with their own resources. *See, e.g., Burt v. Barker*, 861 F.2d 1149 (9th Cir. 1988); *Fujishima v. Bd. of Ed.*, 160 F.2d 1355 (7th Cir. 1972); *Eisner v. Stanford Bd. of Ed.*, 440 F.2d 803 (2d Cir. 1971).

RELIGIOUS BELIEFS AND ACCOMMODATIONS

Free Exercise Clause: Under the First Amendment’s Free Exercise Clause, students have the right to worship as they see fit, with only limited restrictions. This means that while at school, students are free to practice their religion or nonreligion and to express themselves religiously without interference by school officials. Students may, for example, wear religious attire or clothing with religious messaging to school; post religious messages or images on their lockers; or bring religious materials, including religious texts or objects, to school. School officials may not, for instance, require students to remove their hijab, yarmulke, or other head covering, as it substantially burdens the practice of the student’s religion. *See, e.g., Va. Code § 22.1-203.1 et seq.; VIRGINIA STATE BOARD OF EDUCATION, GUIDELINES CONCERNING RELIGIOUS ACTIVITY IN THE PUBLIC SCHOOLS* (1995).

Establishment Clause: Under the First Amendment’s Establishment Clause, school officials cannot favor one religion over another or favor religion over nonbelief. In practice, this means that school officials and teachers cannot conduct prayer or bible-reading sessions, organize or participate in student-led prayer, or hold a prayer at graduation or sporting events, even when participation is voluntary. *See, e.g., Abington Sch. Dist. v. Schempp*, 374 U.S. 203 (1963); *Engel v. Vitale*, 370 U.S. 421 (1962); *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 308 (2000); *Lee v. Weisman*, 505 U.S. 577 (1992). Teachers cannot lead students in devotional activities or encourage student participation in religious activity before or after school, during class, or at school-sponsored activities. In fact, in the public-school context, the Supreme Court has invalidated almost every instance of school- or teacher-sponsored religious expression. Under Virginia law, school boards are permitted to establish a daily observance of one minute of silence, but the school board must be careful to ensure that its policy has secular justifications and is not merely a pretense to encourage prayer. *See, e.g., Va. Code § 22.1-203; VIRGINIA STATE BOARD OF EDUCATION, GUIDELINES CONCERNING RELIGIOUS ACTIVITY IN THE PUBLIC SCHOOLS* (1995).

RIGHTS OF LGBTQ STUDENTS

Cultivating a Safe Environment: Bullying of lesbian, gay, bisexual, transgender, and queer (“LGBTQ”) students has been documented as pervasive at many schools and is all too often ignored, or even encouraged, by school officials. LGBTQ students have a right to live their authentic lives and express themselves at school. Students have a right to be out of the closet at school, and conversely, public schools are not allowed to “out” students publicly. School officials and administrators must ensure they are creating a safe learning environment and protecting LGBTQ students from bullying and harassment. *See, e.g., Title IX, 20 U.S.C. § 1681* (schools may be liable if they act with deliberate indifference in failing to protect students from severe harassment on the basis of sex).



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Restrooms & Locker Rooms: Transgender students must be allowed to use the restroom facilities consistent with their gender identity. Schools cannot create policies that require transgender students to use restrooms or locker rooms that do not correspond with their gender identity, and schools may not create policies that require transgender students to use single-user facilities. *See Grimm v. Gloucester County Sch. Bd.*, Civil No. 4:15-cv-52, 2019 U.S. Dist. Lexis 138246 (E.D. Va. Aug. 9, 2019).

Dress Code: School officials cannot force students to wear clothing inconsistent with their gender identity. Public schools may have dress codes, but dress codes cannot treat students differently based on their gender, force students to conform to sex stereotypes, or censor particular viewpoints. Schools cannot enact dress codes based on the stereotype that only girls can wear some types of clothes and only boys wear other types of clothes. *See, e.g., U.S. v. Virginia*, 518 U.S. 515, 533 (1996) (government actors must not treat male and female students differently because of “overbroad generalizations about the different talents, capacities, or preferences of males and females.”). Schools may, for example, require that skirts be a certain length; however, they cannot require that some students wear skirts and prohibit others from doing so based on the student’s sex or gender expression. This also applies to pants, ties, or other clothing associated with traditional gender roles. And it applies to attire requirements for homecoming, prom, graduation, and other special school events.

Discipline: The intimate relationships of LGBTQ students must be treated with equal dignity as those of heterosexual students. Policies that prohibit same-sex couples or dates from attending prom, homecoming, or other dance functions violates students’ rights under Title IX of the Education Amendments of 1972, the Equal Protection Clause of the U.S. Constitution, and the Bill of Rights of the Virginia Constitution. LGBTQ students should not be punished more severely than heterosexual students for similar behavior, including for displays of affection.

LGBTQ Student Organizations: Students interested in forming a student organization, typically called a gay-straight alliance (“GSA”), are to be treated the same as students forming any other noncurricular organization or club. *See, e.g., 20 U.S.C. § 4071(a)* (if a school allows any noncurricular student group to meet, it cannot deny other groups the same access based on the content of their interest); *Gay All. of Students v. Matthews*, 544 F.2d 162 (4th Cir. 1976).

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DISCIPLINE AND ARRESTS

Generally: School discipline policies and practices should be fair and equitable and should prioritize prevention and intervention rather than harsh punishments like suspension, expulsion, and referral to law enforcement. The goal of discipline should be to teach appropriate behaviors and minimize the time students spend out of class. In Spring 2015, the Center for Public Integrity released a study finding that Virginia led the country in schools referring students to law enforcement, a phenomenon known as the “school-to-prison pipeline.” Additional studies conducted by the Virginia Department of Education found that African American students and students with disabilities were disproportionately represented in both suspensions and referrals to law enforcement throughout Virginia schools. These disparities open up school districts to potential legal challenges for race and disability discrimination under federal civil rights laws. *See, e.g.*, Complaint against Richmond Public Schools, available at <https://acluva.org/en/cases/equal-treatment-richmond-public-school-students>. In order to avoid potential legal problems, and to provide a more equitable school environment, school officials should reevaluate and revise their current discipline policies and practices to create a more positive and preventative approach to student conduct. The Virginia Board of Education has provided a blueprint for schools to use in revising their outdated practices – the Model Guidance for Positive, Preventative Code of Student Conduct Policy and Alternatives to Suspension, available at http://www.doe.virginia.gov/support/student_conduct/index.shtml.

Due Process: The U.S. Constitution requires that students receive due process before disciplinary measures are imposed. This means that school officials must follow certain procedures before they can suspend or expel students from school. Students are generally entitled to receive notice prior to any suspension or expulsion. The notice must include the facts concerning the suspension or expulsion, and the basis for any accusations. The notice must also provide students an opportunity to explain their side. *See, e.g., Goss v. Lopez*, 419 U.S. 565 (1975). For Virginia’s specific procedural requirements, see Va. Code § 22.1-276.01 *et seq.*

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RIGHTS OF STUDENTS WITH DISABILITIES

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RIGHTS OF IMMIGRANT STUDENTS

Schools cannot discriminate against students on the basis of race, color, or national origin. This includes discriminating against students on the basis of their immigration status. Undocumented students have a right to a free public education in your school district regardless of their immigration status, and schools cannot deny students of this right. *See, e.g., Plyler v. Doe*, 457 U.S. 202 (1982). Likewise, schools are not permitted to deny enrollment to a student based on their undocumented status; treat a student differently to determine residency; make inquiries of students or parents that may expose their undocumented status; require social security numbers from parents or students for purposes of enrollment; or engage in any other practices which may chill the right of access to school. Schools cannot turn away students with limited English proficiency; they must be provided with language instruction. *See, e.g., Lau v. Nichols*, 414 U.S. 563 (1974).

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RIGHTS OF PREGNANT STUDENTS

Schools are prohibited from excluding pregnant students and students with children under Title IX of the Education Amendments of 1972. This means that schools must also ensure that pregnant students or students with children have access to educational instruction, school activities, and reasonable accommodations, to the same extent that students with temporary medical conditions are given access, including the ability to make up missed classwork and learn in a safe, nonjudgmental environment. Schools are also not allowed to punish students who choose to terminate a pregnancy or to reveal a student's private medical information.



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Mr. Robbie Mason
Charlotte County
PO Box 790
Charlotte Court House, VA 23923

RE: Students' Rights Reminder for the 2019-2020 Academic Year

Dear Superintendent,

As our communities prepare for the new academic year and students head back to school, it is important to be aware of the key issues affecting Virginia's students and their rights. Being aware of students' rights under state and federal law can help school officials avoid any potential legal complications and contribute to a positive learning environment that will allow each student to thrive.



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Summarized below you will find information regarding: student speech rights; the Pledge of Allegiance; censorship; religious beliefs and accommodations; the rights of students who identify as LGBTQ; discipline and arrests; the rights of students with disabilities; the rights of students who are immigrants; and the rights of students who are pregnant.

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Claire G. Gastañaga
Executive Director



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Establishment Clause: Under the First Amendment’s Establishment Clause, school officials cannot favor one religion over another or favor religion over nonbelief. In practice, this means that school officials and teachers cannot conduct prayer or bible-reading sessions, organize or participate in student-led prayer, or hold a prayer at graduation or sporting events, even when participation is voluntary. *See, e.g., Abington Sch. Dist. v. Schempp*, 374 U.S. 203 (1963); *Engel v. Vitale*, 370 U.S. 421 (1962); *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 308 (2000); *Lee v. Weisman*, 505 U.S. 577 (1992). Teachers cannot lead students in devotional activities or encourage student participation in religious activity before or after school, during class, or at school-sponsored activities. In fact, in the public-school context, the Supreme Court has invalidated almost every instance of school- or teacher-sponsored religious expression. Under Virginia law, school boards are permitted to establish a daily observance of one minute of silence, but the school board must be careful to ensure that its policy has secular justifications and is not merely a pretense to encourage prayer. *See, e.g., Va. Code § 22.1-203; VIRGINIA STATE BOARD OF EDUCATION, GUIDELINES CONCERNING RELIGIOUS ACTIVITY IN THE PUBLIC SCHOOLS* (1995).

RIGHTS OF LGBTQ STUDENTS

Cultivating a Safe Environment: Bullying of lesbian, gay, bisexual, transgender, and queer (“LGBTQ”) students has been documented as pervasive at many schools and is all too often ignored, or even encouraged, by school officials. LGBTQ students have a right to live their authentic lives and express themselves at school. Students have a right to be out of the closet at school, and conversely, public schools are not allowed to “out” students publicly. School officials and administrators must ensure they are creating a safe learning environment and protecting LGBTQ students from bullying and harassment. *See, e.g., Title IX, 20 U.S.C. § 1681* (schools may be liable if they act with deliberate indifference in failing to protect students from severe harassment on the basis of sex).



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Discipline: The intimate relationships of LGBTQ students must be treated with equal dignity as those of heterosexual students. Policies that prohibit same-sex couples or dates from attending prom, homecoming, or other dance functions violates students’ rights under Title IX of the Education Amendments of 1972, the Equal Protection Clause of the U.S. Constitution, and the Bill of Rights of the Virginia Constitution. LGBTQ students should not be punished more severely than heterosexual students for similar behavior, including for displays of affection.

LGBTQ Student Organizations: Students interested in forming a student organization, typically called a gay-straight alliance (“GSA”), are to be treated the same as students forming any other noncurricular organization or club. *See, e.g., 20 U.S.C. § 4071(a)* (if a school allows any noncurricular student group to meet, it cannot deny other groups the same access based on the content of their interest); *Gay All. of Students v. Matthews*, 544 F.2d 162 (4th Cir. 1976).

Gender Markers, Pronouns, and Student Records: Students should be addressed using their preferred names and pronouns. Refusing to do so, or refusing to update the gender markers on a student’s records when provided with appropriate documentation, may be considered a form of sex-based discrimination under federal law. *See Grimm v. Gloucester County Sch. Bd.*, Civil No. 4:15-cv-52, 2019 U.S. Dist. Lexis 138246 (E.D. Va. Aug. 9, 2019). Likewise, a student’s right to privacy includes a student’s sexual orientation or gender identity. It is against the law for school officials to disclose or compel students to disclose this information, even if the student appears open about their sexual orientation or gender identity. *See C.N. v. Wolf*, 410 F. Supp. 2d 894, 903 (C.D. Cal. 2005).



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DISCIPLINE AND ARRESTS

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Due Process: The U.S. Constitution requires that students receive due process before disciplinary measures are imposed. This means that school officials must follow certain procedures before they can suspend or expel students from school. Students are generally entitled to receive notice prior to any suspension or expulsion. The notice must include the facts concerning the suspension or expulsion, and the basis for any accusations. The notice must also provide students an opportunity to explain their side. *See, e.g., Goss v. Lopez*, 419 U.S. 565 (1975). For Virginia’s specific procedural requirements, see Va. Code § 22.1-276.01 *et seq.*

Corporal Punishment: Corporal or physical punishment of students is strictly prohibited by Virginia law. *See* Va. Code § 22.1-279.1.

School Resource Officers: School Resource Officers (“SROs”) can protect students from outside danger, but often punish minor behaviors through ticketing and arrests. Law enforcement intervention should typically be a last resort for minor violations best handled by schools as discipline issues. For additional resources on how to limit disproportionate school-based arrests or referrals to law enforcement, visit the Model Guidance for Positive, Preventative Code of Student Conduct Policy and Alternatives to Suspension, available at http://www.doe.virginia.gov/support/student_conduct/index.shtml.



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Students with disabilities are provided legal protections under several federal laws. The Individuals with Disabilities Education Act (“IDEA”) requires that public schools provide eligible students with disabilities a “free, appropriate public education” in the least restrictive environment. *See* 20 U.S.C. § 1400 *et seq.* As part of the IDEA, schools must affirmatively locate, identify, and evaluate children in their district for special education and related services, a process known as “child find.” Parents may also request an evaluation at any time in writing or by speaking to a teacher or administrator, and the school district must respond to the parent’s request. Schools must educate students with disabilities in the least restrictive setting possible, with an emphasis on inclusion and integration in the regular education classroom where feasible. Additionally, students receiving special education services under the IDEA, as well as students suspected of being eligible to receive services, are entitled to certain protections and safeguards in the school discipline process. *See* 34 C.F.R. § 300.530 *et seq.*

Students with disabilities are also provided with protections under Section 504 of the Rehabilitation Act of 1974 (“Section 504”) and Title II of the Americans with Disabilities Act (“ADA”). Section 504 and the ADA prohibit discrimination against students with disabilities. This means that schools are prohibited by federal law from denying students with disabilities equal access to academic courses, field trips, extracurricular activities, school technology, and health services. School officials also have a duty to ensure that students with disabilities are not being discriminated against by being denied necessary accommodations. Restricting access to educational activities and opportunities, ignoring harassment and bullying, and failing to train staff on compliance with these laws is also prohibited under Section 504 and the ADA. *See also* Va. Code § 22.1-213 *et seq.*

RIGHTS OF IMMIGRANT STUDENTS

Schools cannot discriminate against students on the basis of race, color, or national origin. This includes discriminating against students on the basis of their immigration status. Undocumented students have a right to a free public education in your school district regardless of their immigration status, and schools cannot deny students of this right. *See, e.g., Plyler v. Doe*, 457 U.S. 202 (1982). Likewise, schools are not permitted to deny enrollment to a student based on their undocumented status; treat a student differently to determine residency; make inquiries of students or parents that may expose their undocumented status; require social security numbers from parents or students for purposes of enrollment; or engage in any other practices which may chill the right of access to school. Schools cannot turn away students with limited English proficiency; they must be provided with language instruction. *See, e.g., Lau v. Nichols*, 414 U.S. 563 (1974).

School officials should not allow immigration enforcement actions on school grounds without a judicial warrant based on probable cause that a criminal violation of the immigration laws has occurred. Schools should not call immigration authorities on students or consent to any immigration enforcement on school grounds without a criminal warrant. There is no state law requiring any state or local official to contact immigration officials nor any state or federal law prohibiting adoption of a policy that protects students and teachers from immigration action in the absence of a judicial criminal warrant.

RIGHTS OF PREGNANT STUDENTS

Schools are prohibited from excluding pregnant students and students with children under Title IX of the Education Amendments of 1972. This means that schools must also ensure that pregnant students or students with children have access to educational instruction, school activities, and reasonable accommodations, to the same extent that students with temporary medical conditions are given access, including the ability to make up missed classwork and learn in a safe, nonjudgmental environment. Schools are also not allowed to punish students who choose to terminate a pregnancy or to reveal a student's private medical information.



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Dr. Rosa S. Atkins
Charlottesville
1562 Dairy Rd
Charlottesville, VA 22903

RE: Students' Rights Reminder for the 2019-2020 Academic Year

Dear Superintendent,

As our communities prepare for the new academic year and students head back to school, it is important to be aware of the key issues affecting Virginia's students and their rights. Being aware of students' rights under state and federal law can help school officials avoid any potential legal complications and contribute to a positive learning environment that will allow each student to thrive.



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Federal and state laws afford children enrolled in school protection from discrimination and harassment based on race, color, religion, sex, national origin, or disability. Schools are responsible for ensuring these rights are protected and for promoting a safe school atmosphere. Additionally, schools are responsible for ensuring that students' right to free speech is respected and that the freedom to practice their religion—or no religion at all— is upheld.

Summarized below you will find information regarding: student speech rights; the Pledge of Allegiance; censorship; religious beliefs and accommodations; the rights of students who identify as LGBTQ; discipline and arrests; the rights of students with disabilities; the rights of students who are immigrants; and the rights of students who are pregnant.

We hope this information will help your school district understand the rights of students in schools and guide you in taking actions that ensure student rights are protected in a safe and supportive environment. Please do not hesitate to contact the ACLU of Virginia if you have any questions about these issues or if we can be of any assistance to you in evaluating and formulating school policy on any of these matters. We can be reached at (804) 644-8022 or acluva@acluva.org.

Very truly yours,

A handwritten signature in blue ink, which appears to read "Claire G. Gastañaga". The signature is fluid and cursive.

Claire G. Gastañaga
Executive Director



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STUDENT SPEECH RIGHTS

The First Amendment ensures that students cannot be punished for exercising free speech rights, even if administrators do not approve of their message. In the landmark Supreme Court case *Tinker v. Des Moines Independent Community School District*, the ACLU successfully challenged a school district's decision to suspend three students for wearing armbands in protest of the Vietnam War. 393 U.S. 503 (1969). The court declared that students and teachers do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." *Id.* at 506. Over the years, the ACLU has also successfully defended the right of students to wear an anti-abortion armband, a pro-LGBTQ t-shirt, and shirts critical of political figures. Schools may not discipline students for expressing an idea or political viewpoint in class or during school activities, as long as it does not cause a substantial disruption to the school environment.

It is true that the constitutional rights of students in public school are not the same as those of adults exercising First Amendment rights on public streets. Students' speech rights may be limited by reasonable time, place, and manner restrictions because of the unique characteristics of the school environment. A school may limit student speech, for example, through reasonable school-wide policies against cyberbullying. Additionally, schools may prohibit vulgar or offensive speech that is inconsistent with the "fundamental values of public school education." *Bethel Sch. Dist. No. 43 v. Fraser*, 478 U.S. 675, 685-86 (1986).

School officials should take care, however, not to define peaceful assembly as behavior that causes a substantial disruption to school activities. If students engage in a walkout, school officials may choose to discipline students for missing class but may not engage in harsher punishment because of the message or political nature of the action. School officials must not draw distinctions based on the content of a student's speech or expressive activity in imposing discipline.

PLEDGE OF ALLEGIANCE

Schools cannot punish students for refusing to salute the flag or say the Pledge of Allegiance. *W.Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624 (1943); *Sherman v. Comm. Consol. Sch. Dist. 21*, 980 F.2d 437 (7th Cir. 1992). School officials also cannot force students to stand during the Pledge of Allegiance or leave the room if a student refuses to recite the Pledge. *See* Va. Code § 22.1-202(C) ("[N]o student shall be compelled to recite the Pledge if he, his parent or legal guardian objects on religious, philosophical or other grounds to his participating in this exercise.")

CENSORSHIP

Books: Banning books, removing books and materials from a classroom or library, or otherwise making it difficult for students to read a broad array of literature limits intellectual freedom. Making books and ideas unavailable based on their content or viewpoint or taking books out of schools because they are controversial, unpopular, or offensive, may violate the First Amendment. *See, e.g., Bd. of Educ. v. Pico*, 457 U.S. 853 (1982). Courts view school libraries as the main place where students exercise their freedom "to inquire, to study and to evaluate, to gain new maturity and understanding." *Id.* at 868.

Student Publications: Schools may review and control the content of school sponsored student publications including student newspapers, yearbooks, literary magazines, on-campus videos, and radio broadcasts. But schools cannot control student publications that are not sponsored or funded by the school, not done as part of a class or school project, or that are done on a student’s own time with their own resources. *See, e.g., Burt v. Barker*, 861 F.2d 1149 (9th Cir. 1988); *Fujishima v. Bd. of Ed.*, 160 F.2d 1355 (7th Cir. 1972); *Eisner v. Stanford Bd. of Ed.*, 440 F.2d 803 (2d Cir. 1971).

RELIGIOUS BELIEFS AND ACCOMMODATIONS

Free Exercise Clause: Under the First Amendment’s Free Exercise Clause, students have the right to worship as they see fit, with only limited restrictions. This means that while at school, students are free to practice their religion or nonreligion and to express themselves religiously without interference by school officials. Students may, for example, wear religious attire or clothing with religious messaging to school; post religious messages or images on their lockers; or bring religious materials, including religious texts or objects, to school. School officials may not, for instance, require students to remove their hijab, yarmulke, or other head covering, as it substantially burdens the practice of the student’s religion. *See, e.g., Va. Code § 22.1-203.1 et seq.; VIRGINIA STATE BOARD OF EDUCATION, GUIDELINES CONCERNING RELIGIOUS ACTIVITY IN THE PUBLIC SCHOOLS* (1995).

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DISCIPLINE AND ARRESTS

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RIGHTS OF PREGNANT STUDENTS

Schools are prohibited from excluding pregnant students and students with children under Title IX of the Education Amendments of 1972. This means that schools must also ensure that pregnant students or students with children have access to educational instruction, school activities, and reasonable accommodations, to the same extent that students with temporary medical conditions are given access, including the ability to make up missed classwork and learn in a safe, nonjudgmental environment. Schools are also not allowed to punish students who choose to terminate a pregnancy or to reveal a student's private medical information.



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Dr. Jared A. Cotton
Chesapeake
312 Cedar Rd
Chesapeake, VA 23322

RE: Students' Rights Reminder for the 2019-2020 Academic Year

Dear Superintendent,

As our communities prepare for the new academic year and students head back to school, it is important to be aware of the key issues affecting Virginia's students and their rights. Being aware of students' rights under state and federal law can help school officials avoid any potential legal complications and contribute to a positive learning environment that will allow each student to thrive.



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We hope this information will help your school district understand the rights of students in schools and guide you in taking actions that ensure student rights are protected in a safe and supportive environment. Please do not hesitate to contact the ACLU of Virginia if you have any questions about these issues or if we can be of any assistance to you in evaluating and formulating school policy on any of these matters. We can be reached at (804) 644-8022 or acluva@acluva.org.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Claire G. Gastañaga". The signature is fluid and cursive.

Claire G. Gastañaga
Executive Director



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STUDENT SPEECH RIGHTS

The First Amendment ensures that students cannot be punished for exercising free speech rights, even if administrators do not approve of their message. In the landmark Supreme Court case *Tinker v. Des Moines Independent Community School District*, the ACLU successfully challenged a school district's decision to suspend three students for wearing armbands in protest of the Vietnam War. 393 U.S. 503 (1969). The court declared that students and teachers do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." *Id.* at 506. Over the years, the ACLU has also successfully defended the right of students to wear an anti-abortion armband, a pro-LGBTQ t-shirt, and shirts critical of political figures. Schools may not discipline students for expressing an idea or political viewpoint in class or during school activities, as long as it does not cause a substantial disruption to the school environment.

It is true that the constitutional rights of students in public school are not the same as those of adults exercising First Amendment rights on public streets. Students' speech rights may be limited by reasonable time, place, and manner restrictions because of the unique characteristics of the school environment. A school may limit student speech, for example, through reasonable school-wide policies against cyberbullying. Additionally, schools may prohibit vulgar or offensive speech that is inconsistent with the "fundamental values of public school education." *Bethel Sch. Dist. No. 43 v. Fraser*, 478 U.S. 675, 685-86 (1986).

School officials should take care, however, not to define peaceful assembly as behavior that causes a substantial disruption to school activities. If students engage in a walkout, school officials may choose to discipline students for missing class but may not engage in harsher punishment because of the message or political nature of the action. School officials must not draw distinctions based on the content of a student's speech or expressive activity in imposing discipline.

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RIGHTS OF LGBTQ STUDENTS

Cultivating a Safe Environment: Bullying of lesbian, gay, bisexual, transgender, and queer (“LGBTQ”) students has been documented as pervasive at many schools and is all too often ignored, or even encouraged, by school officials. LGBTQ students have a right to live their authentic lives and express themselves at school. Students have a right to be out of the closet at school, and conversely, public schools are not allowed to “out” students publicly. School officials and administrators must ensure they are creating a safe learning environment and protecting LGBTQ students from bullying and harassment. *See, e.g., Title IX, 20 U.S.C. § 1681* (schools may be liable if they act with deliberate indifference in failing to protect students from severe harassment on the basis of sex).



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Gender Markers, Pronouns, and Student Records: Students should be addressed using their preferred names and pronouns. Refusing to do so, or refusing to update the gender markers on a student’s records when provided with appropriate documentation, may be considered a form of sex-based discrimination under federal law. *See Grimm v. Gloucester County Sch. Bd.*, Civil No. 4:15-cv-52, 2019 U.S. Dist. Lexis 138246 (E.D. Va. Aug. 9, 2019). Likewise, a student’s right to privacy includes a student’s sexual orientation or gender identity. It is against the law for school officials to disclose or compel students to disclose this information, even if the student appears open about their sexual orientation or gender identity. *See C.N. v. Wolf*, 410 F. Supp. 2d 894, 903 (C.D. Cal. 2005).



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DISCIPLINE AND ARRESTS

Generally: School discipline policies and practices should be fair and equitable and should prioritize prevention and intervention rather than harsh punishments like suspension, expulsion, and referral to law enforcement. The goal of discipline should be to teach appropriate behaviors and minimize the time students spend out of class. In Spring 2015, the Center for Public Integrity released a study finding that Virginia led the country in schools referring students to law enforcement, a phenomenon known as the “school-to-prison pipeline.” Additional studies conducted by the Virginia Department of Education found that African American students and students with disabilities were disproportionately represented in both suspensions and referrals to law enforcement throughout Virginia schools. These disparities open up school districts to potential legal challenges for race and disability discrimination under federal civil rights laws. *See, e.g.*, Complaint against Richmond Public Schools, available at <https://acluva.org/en/cases/equal-treatment-richmond-public-school-students>. In order to avoid potential legal problems, and to provide a more equitable school environment, school officials should reevaluate and revise their current discipline policies and practices to create a more positive and preventative approach to student conduct. The Virginia Board of Education has provided a blueprint for schools to use in revising their outdated practices – the Model Guidance for Positive, Preventative Code of Student Conduct Policy and Alternatives to Suspension, available at http://www.doe.virginia.gov/support/student_conduct/index.shtml.

Due Process: The U.S. Constitution requires that students receive due process before disciplinary measures are imposed. This means that school officials must follow certain procedures before they can suspend or expel students from school. Students are generally entitled to receive notice prior to any suspension or expulsion. The notice must include the facts concerning the suspension or expulsion, and the basis for any accusations. The notice must also provide students an opportunity to explain their side. *See, e.g., Goss v. Lopez*, 419 U.S. 565 (1975). For Virginia’s specific procedural requirements, see Va. Code § 22.1-276.01 *et seq.*

Corporal Punishment: Corporal or physical punishment of students is strictly prohibited by Virginia law. *See* Va. Code § 22.1-279.1.

School Resource Officers: School Resource Officers (“SROs”) can protect students from outside danger, but often punish minor behaviors through ticketing and arrests. Law enforcement intervention should typically be a last resort for minor violations best handled by schools as discipline issues. For additional resources on how to limit disproportionate school-based arrests or referrals to law enforcement, visit the Model Guidance for Positive, Preventative Code of Student Conduct Policy and Alternatives to Suspension, available at http://www.doe.virginia.gov/support/student_conduct/index.shtml.



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Students with disabilities are provided legal protections under several federal laws. The Individuals with Disabilities Education Act (“IDEA”) requires that public schools provide eligible students with disabilities a “free, appropriate public education” in the least restrictive environment. *See* 20 U.S.C. § 1400 *et seq.* As part of the IDEA, schools must affirmatively locate, identify, and evaluate children in their district for special education and related services, a process known as “child find.” Parents may also request an evaluation at any time in writing or by speaking to a teacher or administrator, and the school district must respond to the parent’s request. Schools must educate students with disabilities in the least restrictive setting possible, with an emphasis on inclusion and integration in the regular education classroom where feasible. Additionally, students receiving special education services under the IDEA, as well as students suspected of being eligible to receive services, are entitled to certain protections and safeguards in the school discipline process. *See* 34 C.F.R. § 300.530 *et seq.*

Students with disabilities are also provided with protections under Section 504 of the Rehabilitation Act of 1974 (“Section 504”) and Title II of the Americans with Disabilities Act (“ADA”). Section 504 and the ADA prohibit discrimination against students with disabilities. This means that schools are prohibited by federal law from denying students with disabilities equal access to academic courses, field trips, extracurricular activities, school technology, and health services. School officials also have a duty to ensure that students with disabilities are not being discriminated against by being denied necessary accommodations. Restricting access to educational activities and opportunities, ignoring harassment and bullying, and failing to train staff on compliance with these laws is also prohibited under Section 504 and the ADA. *See also* Va. Code § 22.1-213 *et seq.*

RIGHTS OF IMMIGRANT STUDENTS

Schools cannot discriminate against students on the basis of race, color, or national origin. This includes discriminating against students on the basis of their immigration status. Undocumented students have a right to a free public education in your school district regardless of their immigration status, and schools cannot deny students of this right. *See, e.g., Plyler v. Doe*, 457 U.S. 202 (1982). Likewise, schools are not permitted to deny enrollment to a student based on their undocumented status; treat a student differently to determine residency; make inquiries of students or parents that may expose their undocumented status; require social security numbers from parents or students for purposes of enrollment; or engage in any other practices which may chill the right of access to school. Schools cannot turn away students with limited English proficiency; they must be provided with language instruction. *See, e.g., Lau v. Nichols*, 414 U.S. 563 (1974).

School officials should not allow immigration enforcement actions on school grounds without a judicial warrant based on probable cause that a criminal violation of the immigration laws has occurred. Schools should not call immigration authorities on students or consent to any immigration enforcement on school grounds without a criminal warrant. There is no state law requiring any state or local official to contact immigration officials nor any state or federal law prohibiting adoption of a policy that protects students and teachers from immigration action in the absence of a judicial criminal warrant.

RIGHTS OF PREGNANT STUDENTS

Schools are prohibited from excluding pregnant students and students with children under Title IX of the Education Amendments of 1972. This means that schools must also ensure that pregnant students or students with children have access to educational instruction, school activities, and reasonable accommodations, to the same extent that students with temporary medical conditions are given access, including the ability to make up missed classwork and learn in a safe, nonjudgmental environment. Schools are also not allowed to punish students who choose to terminate a pregnancy or to reveal a student's private medical information.



AMERICAN CIVIL LIBERTIES UNION
FOUNDATION

Virginia

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Dr. Mervin B Daugherty
Chesterfield County
P.O. Box 10
Chesterfield, VA 23832

RE: Students' Rights Reminder for the 2019-2020 Academic Year

Dear Superintendent,

As our communities prepare for the new academic year and students head back to school, it is important to be aware of the key issues affecting Virginia's students and their rights. Being aware of students' rights under state and federal law can help school officials avoid any potential legal complications and contribute to a positive learning environment that will allow each student to thrive.



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Federal and state laws afford children enrolled in school protection from discrimination and harassment based on race, color, religion, sex, national origin, or disability. Schools are responsible for ensuring these rights are protected and for promoting a safe school atmosphere. Additionally, schools are responsible for ensuring that students' right to free speech is respected and that the freedom to practice their religion—or no religion at all— is upheld.

Summarized below you will find information regarding: student speech rights; the Pledge of Allegiance; censorship; religious beliefs and accommodations; the rights of students who identify as LGBTQ; discipline and arrests; the rights of students with disabilities; the rights of students who are immigrants; and the rights of students who are pregnant.

We hope this information will help your school district understand the rights of students in schools and guide you in taking actions that ensure student rights are protected in a safe and supportive environment. Please do not hesitate to contact the ACLU of Virginia if you have any questions about these issues or if we can be of any assistance to you in evaluating and formulating school policy on any of these matters. We can be reached at (804) 644-8022 or acluva@acluva.org.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Claire G. Gastañaga". The signature is fluid and cursive.

Claire G. Gastañaga
Executive Director



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Schools cannot discriminate against students on the basis of race, color, or national origin. This includes discriminating against students on the basis of their immigration status. Undocumented students have a right to a free public education in your school district regardless of their immigration status, and schools cannot deny students of this right. *See, e.g., Plyler v. Doe*, 457 U.S. 202 (1982). Likewise, schools are not permitted to deny enrollment to a student based on their undocumented status; treat a student differently to determine residency; make inquiries of students or parents that may expose their undocumented status; require social security numbers from parents or students for purposes of enrollment; or engage in any other practices which may chill the right of access to school. Schools cannot turn away students with limited English proficiency; they must be provided with language instruction. *See, e.g., Lau v. Nichols*, 414 U.S. 563 (1974).

School officials should not allow immigration enforcement actions on school grounds without a judicial warrant based on probable cause that a criminal violation of the immigration laws has occurred. Schools should not call immigration authorities on students or consent to any immigration enforcement on school grounds without a criminal warrant. There is no state law requiring any state or local official to contact immigration officials nor any state or federal law prohibiting adoption of a policy that protects students and teachers from immigration action in the absence of a judicial criminal warrant.

RIGHTS OF PREGNANT STUDENTS

Schools are prohibited from excluding pregnant students and students with children under Title IX of the Education Amendments of 1972. This means that schools must also ensure that pregnant students or students with children have access to educational instruction, school activities, and reasonable accommodations, to the same extent that students with temporary medical conditions are given access, including the ability to make up missed classwork and learn in a safe, nonjudgmental environment. Schools are also not allowed to punish students who choose to terminate a pregnancy or to reveal a student's private medical information.



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Dr. Chuck Bishop
Clarke County
317 W Main St Ste A
Berryville, VA 22611

RE: Students' Rights Reminder for the 2019-2020 Academic Year

Dear Superintendent,

As our communities prepare for the new academic year and students head back to school, it is important to be aware of the key issues affecting Virginia's students and their rights. Being aware of students' rights under state and federal law can help school officials avoid any potential legal complications and contribute to a positive learning environment that will allow each student to thrive.



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Federal and state laws afford children enrolled in school protection from discrimination and harassment based on race, color, religion, sex, national origin, or disability. Schools are responsible for ensuring these rights are protected and for promoting a safe school atmosphere. Additionally, schools are responsible for ensuring that students' right to free speech is respected and that the freedom to practice their religion—or no religion at all— is upheld.

Summarized below you will find information regarding: student speech rights; the Pledge of Allegiance; censorship; religious beliefs and accommodations; the rights of students who identify as LGBTQ; discipline and arrests; the rights of students with disabilities; the rights of students who are immigrants; and the rights of students who are pregnant.

We hope this information will help your school district understand the rights of students in schools and guide you in taking actions that ensure student rights are protected in a safe and supportive environment. Please do not hesitate to contact the ACLU of Virginia if you have any questions about these issues or if we can be of any assistance to you in evaluating and formulating school policy on any of these matters. We can be reached at (804) 644-8022 or acluva@acluva.org.

Very truly yours,

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Claire G. Gastañaga
Executive Director



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STUDENT SPEECH RIGHTS

The First Amendment ensures that students cannot be punished for exercising free speech rights, even if administrators do not approve of their message. In the landmark Supreme Court case *Tinker v. Des Moines Independent Community School District*, the ACLU successfully challenged a school district's decision to suspend three students for wearing armbands in protest of the Vietnam War. 393 U.S. 503 (1969). The court declared that students and teachers do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." *Id.* at 506. Over the years, the ACLU has also successfully defended the right of students to wear an anti-abortion armband, a pro-LGBTQ t-shirt, and shirts critical of political figures. Schools may not discipline students for expressing an idea or political viewpoint in class or during school activities, as long as it does not cause a substantial disruption to the school environment.

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Establishment Clause: Under the First Amendment’s Establishment Clause, school officials cannot favor one religion over another or favor religion over nonbelief. In practice, this means that school officials and teachers cannot conduct prayer or bible-reading sessions, organize or participate in student-led prayer, or hold a prayer at graduation or sporting events, even when participation is voluntary. *See, e.g., Abington Sch. Dist. v. Schempp*, 374 U.S. 203 (1963); *Engel v. Vitale*, 370 U.S. 421 (1962); *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 308 (2000); *Lee v. Weisman*, 505 U.S. 577 (1992). Teachers cannot lead students in devotional activities or encourage student participation in religious activity before or after school, during class, or at school-sponsored activities. In fact, in the public-school context, the Supreme Court has invalidated almost every instance of school- or teacher-sponsored religious expression. Under Virginia law, school boards are permitted to establish a daily observance of one minute of silence, but the school board must be careful to ensure that its policy has secular justifications and is not merely a pretense to encourage prayer. *See, e.g., Va. Code § 22.1-203; VIRGINIA STATE BOARD OF EDUCATION, GUIDELINES CONCERNING RELIGIOUS ACTIVITY IN THE PUBLIC SCHOOLS* (1995).

RIGHTS OF LGBTQ STUDENTS

Cultivating a Safe Environment: Bullying of lesbian, gay, bisexual, transgender, and queer (“LGBTQ”) students has been documented as pervasive at many schools and is all too often ignored, or even encouraged, by school officials. LGBTQ students have a right to live their authentic lives and express themselves at school. Students have a right to be out of the closet at school, and conversely, public schools are not allowed to “out” students publicly. School officials and administrators must ensure they are creating a safe learning environment and protecting LGBTQ students from bullying and harassment. *See, e.g., Title IX, 20 U.S.C. § 1681* (schools may be liable if they act with deliberate indifference in failing to protect students from severe harassment on the basis of sex).



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Discipline: The intimate relationships of LGBTQ students must be treated with equal dignity as those of heterosexual students. Policies that prohibit same-sex couples or dates from attending prom, homecoming, or other dance functions violates students’ rights under Title IX of the Education Amendments of 1972, the Equal Protection Clause of the U.S. Constitution, and the Bill of Rights of the Virginia Constitution. LGBTQ students should not be punished more severely than heterosexual students for similar behavior, including for displays of affection.

LGBTQ Student Organizations: Students interested in forming a student organization, typically called a gay-straight alliance (“GSA”), are to be treated the same as students forming any other noncurricular organization or club. *See, e.g., 20 U.S.C. § 4071(a)* (if a school allows any noncurricular student group to meet, it cannot deny other groups the same access based on the content of their interest); *Gay All. of Students v. Matthews*, 544 F.2d 162 (4th Cir. 1976).

Gender Markers, Pronouns, and Student Records: Students should be addressed using their preferred names and pronouns. Refusing to do so, or refusing to update the gender markers on a student’s records when provided with appropriate documentation, may be considered a form of sex-based discrimination under federal law. *See Grimm v. Gloucester County Sch. Bd.*, Civil No. 4:15-cv-52, 2019 U.S. Dist. Lexis 138246 (E.D. Va. Aug. 9, 2019). Likewise, a student’s right to privacy includes a student’s sexual orientation or gender identity. It is against the law for school officials to disclose or compel students to disclose this information, even if the student appears open about their sexual orientation or gender identity. *See C.N. v. Wolf*, 410 F. Supp. 2d 894, 903 (C.D. Cal. 2005).



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DISCIPLINE AND ARRESTS

Generally: School discipline policies and practices should be fair and equitable and should prioritize prevention and intervention rather than harsh punishments like suspension, expulsion, and referral to law enforcement. The goal of discipline should be to teach appropriate behaviors and minimize the time students spend out of class. In Spring 2015, the Center for Public Integrity released a study finding that Virginia led the country in schools referring students to law enforcement, a phenomenon known as the “school-to-prison pipeline.” Additional studies conducted by the Virginia Department of Education found that African American students and students with disabilities were disproportionately represented in both suspensions and referrals to law enforcement throughout Virginia schools. These disparities open up school districts to potential legal challenges for race and disability discrimination under federal civil rights laws. *See, e.g.*, Complaint against Richmond Public Schools, available at <https://acluva.org/en/cases/equal-treatment-richmond-public-school-students>. In order to avoid potential legal problems, and to provide a more equitable school environment, school officials should reevaluate and revise their current discipline policies and practices to create a more positive and preventative approach to student conduct. The Virginia Board of Education has provided a blueprint for schools to use in revising their outdated practices – the Model Guidance for Positive, Preventative Code of Student Conduct Policy and Alternatives to Suspension, available at http://www.doe.virginia.gov/support/student_conduct/index.shtml.

Due Process: The U.S. Constitution requires that students receive due process before disciplinary measures are imposed. This means that school officials must follow certain procedures before they can suspend or expel students from school. Students are generally entitled to receive notice prior to any suspension or expulsion. The notice must include the facts concerning the suspension or expulsion, and the basis for any accusations. The notice must also provide students an opportunity to explain their side. *See, e.g., Goss v. Lopez*, 419 U.S. 565 (1975). For Virginia’s specific procedural requirements, see Va. Code § 22.1-276.01 *et seq.*

Corporal Punishment: Corporal or physical punishment of students is strictly prohibited by Virginia law. *See* Va. Code § 22.1-279.1.

School Resource Officers: School Resource Officers (“SROs”) can protect students from outside danger, but often punish minor behaviors through ticketing and arrests. Law enforcement intervention should typically be a last resort for minor violations best handled by schools as discipline issues. For additional resources on how to limit disproportionate school-based arrests or referrals to law enforcement, visit the Model Guidance for Positive, Preventative Code of Student Conduct Policy and Alternatives to Suspension, available at http://www.doe.virginia.gov/support/student_conduct/index.shtml.



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RIGHTS OF STUDENTS WITH DISABILITIES

Students with disabilities are provided legal protections under several federal laws. The Individuals with Disabilities Education Act (“IDEA”) requires that public schools provide eligible students with disabilities a “free, appropriate public education” in the least restrictive environment. *See* 20 U.S.C. § 1400 *et seq.* As part of the IDEA, schools must affirmatively locate, identify, and evaluate children in their district for special education and related services, a process known as “child find.” Parents may also request an evaluation at any time in writing or by speaking to a teacher or administrator, and the school district must respond to the parent’s request. Schools must educate students with disabilities in the least restrictive setting possible, with an emphasis on inclusion and integration in the regular education classroom where feasible. Additionally, students receiving special education services under the IDEA, as well as students suspected of being eligible to receive services, are entitled to certain protections and safeguards in the school discipline process. *See* 34 C.F.R. § 300.530 *et seq.*

Students with disabilities are also provided with protections under Section 504 of the Rehabilitation Act of 1974 (“Section 504”) and Title II of the Americans with Disabilities Act (“ADA”). Section 504 and the ADA prohibit discrimination against students with disabilities. This means that schools are prohibited by federal law from denying students with disabilities equal access to academic courses, field trips, extracurricular activities, school technology, and health services. School officials also have a duty to ensure that students with disabilities are not being discriminated against by being denied necessary accommodations. Restricting access to educational activities and opportunities, ignoring harassment and bullying, and failing to train staff on compliance with these laws is also prohibited under Section 504 and the ADA. *See also* Va. Code § 22.1-213 *et seq.*

RIGHTS OF IMMIGRANT STUDENTS

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RIGHTS OF PREGNANT STUDENTS

Schools are prohibited from excluding pregnant students and students with children under Title IX of the Education Amendments of 1972. This means that schools must also ensure that pregnant students or students with children have access to educational instruction, school activities, and reasonable accommodations, to the same extent that students with temporary medical conditions are given access, including the ability to make up missed classwork and learn in a safe, nonjudgmental environment. Schools are also not allowed to punish students who choose to terminate a pregnancy or to reveal a student's private medical information.



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Mr. Dashan Turner
Colonial Beach
16 N. Irving Ave
Colonial Beach, VA 22443

RE: Students' Rights Reminder for the 2019-2020 Academic Year

Dear Superintendent,

As our communities prepare for the new academic year and students head back to school, it is important to be aware of the key issues affecting Virginia's students and their rights. Being aware of students' rights under state and federal law can help school officials avoid any potential legal complications and contribute to a positive learning environment that will allow each student to thrive.



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Summarized below you will find information regarding: student speech rights; the Pledge of Allegiance; censorship; religious beliefs and accommodations; the rights of students who identify as LGBTQ; discipline and arrests; the rights of students with disabilities; the rights of students who are immigrants; and the rights of students who are pregnant.

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DISCIPLINE AND ARRESTS

Generally: School discipline policies and practices should be fair and equitable and should prioritize prevention and intervention rather than harsh punishments like suspension, expulsion, and referral to law enforcement. The goal of discipline should be to teach appropriate behaviors and minimize the time students spend out of class. In Spring 2015, the Center for Public Integrity released a study finding that Virginia led the country in schools referring students to law enforcement, a phenomenon known as the “school-to-prison pipeline.” Additional studies conducted by the Virginia Department of Education found that African American students and students with disabilities were disproportionately represented in both suspensions and referrals to law enforcement throughout Virginia schools. These disparities open up school districts to potential legal challenges for race and disability discrimination under federal civil rights laws. *See, e.g.*, Complaint against Richmond Public Schools, available at <https://acluva.org/en/cases/equal-treatment-richmond-public-school-students>. In order to avoid potential legal problems, and to provide a more equitable school environment, school officials should reevaluate and revise their current discipline policies and practices to create a more positive and preventative approach to student conduct. The Virginia Board of Education has provided a blueprint for schools to use in revising their outdated practices – the Model Guidance for Positive, Preventative Code of Student Conduct Policy and Alternatives to Suspension, available at http://www.doe.virginia.gov/support/student_conduct/index.shtml.

Due Process: The U.S. Constitution requires that students receive due process before disciplinary measures are imposed. This means that school officials must follow certain procedures before they can suspend or expel students from school. Students are generally entitled to receive notice prior to any suspension or expulsion. The notice must include the facts concerning the suspension or expulsion, and the basis for any accusations. The notice must also provide students an opportunity to explain their side. *See, e.g., Goss v. Lopez*, 419 U.S. 565 (1975). For Virginia’s specific procedural requirements, see Va. Code § 22.1-276.01 *et seq.*

Corporal Punishment: Corporal or physical punishment of students is strictly prohibited by Virginia law. *See* Va. Code § 22.1-279.1.

School Resource Officers: School Resource Officers (“SROs”) can protect students from outside danger, but often punish minor behaviors through ticketing and arrests. Law enforcement intervention should typically be a last resort for minor violations best handled by schools as discipline issues. For additional resources on how to limit disproportionate school-based arrests or referrals to law enforcement, visit the Model Guidance for Positive, Preventative Code of Student Conduct Policy and Alternatives to Suspension, available at http://www.doe.virginia.gov/support/student_conduct/index.shtml.



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RIGHTS OF STUDENTS WITH DISABILITIES

Students with disabilities are provided legal protections under several federal laws. The Individuals with Disabilities Education Act (“IDEA”) requires that public schools provide eligible students with disabilities a “free, appropriate public education” in the least restrictive environment. *See* 20 U.S.C. § 1400 *et seq.* As part of the IDEA, schools must affirmatively locate, identify, and evaluate children in their district for special education and related services, a process known as “child find.” Parents may also request an evaluation at any time in writing or by speaking to a teacher or administrator, and the school district must respond to the parent’s request. Schools must educate students with disabilities in the least restrictive setting possible, with an emphasis on inclusion and integration in the regular education classroom where feasible. Additionally, students receiving special education services under the IDEA, as well as students suspected of being eligible to receive services, are entitled to certain protections and safeguards in the school discipline process. *See* 34 C.F.R. § 300.530 *et seq.*

Students with disabilities are also provided with protections under Section 504 of the Rehabilitation Act of 1974 (“Section 504”) and Title II of the Americans with Disabilities Act (“ADA”). Section 504 and the ADA prohibit discrimination against students with disabilities. This means that schools are prohibited by federal law from denying students with disabilities equal access to academic courses, field trips, extracurricular activities, school technology, and health services. School officials also have a duty to ensure that students with disabilities are not being discriminated against by being denied necessary accommodations. Restricting access to educational activities and opportunities, ignoring harassment and bullying, and failing to train staff on compliance with these laws is also prohibited under Section 504 and the ADA. *See also* Va. Code § 22.1-213 *et seq.*

RIGHTS OF IMMIGRANT STUDENTS

Schools cannot discriminate against students on the basis of race, color, or national origin. This includes discriminating against students on the basis of their immigration status. Undocumented students have a right to a free public education in your school district regardless of their immigration status, and schools cannot deny students of this right. *See, e.g., Plyler v. Doe*, 457 U.S. 202 (1982). Likewise, schools are not permitted to deny enrollment to a student based on their undocumented status; treat a student differently to determine residency; make inquiries of students or parents that may expose their undocumented status; require social security numbers from parents or students for purposes of enrollment; or engage in any other practices which may chill the right of access to school. Schools cannot turn away students with limited English proficiency; they must be provided with language instruction. *See, e.g., Lau v. Nichols*, 414 U.S. 563 (1974).

School officials should not allow immigration enforcement actions on school grounds without a judicial warrant based on probable cause that a criminal violation of the immigration laws has occurred. Schools should not call immigration authorities on students or consent to any immigration enforcement on school grounds without a criminal warrant. There is no state law requiring any state or local official to contact immigration officials nor any state or federal law prohibiting adoption of a policy that protects students and teachers from immigration action in the absence of a judicial criminal warrant.

RIGHTS OF PREGNANT STUDENTS

Schools are prohibited from excluding pregnant students and students with children under Title IX of the Education Amendments of 1972. This means that schools must also ensure that pregnant students or students with children have access to educational instruction, school activities, and reasonable accommodations, to the same extent that students with temporary medical conditions are given access, including the ability to make up missed classwork and learn in a safe, nonjudgmental environment. Schools are also not allowed to punish students who choose to terminate a pregnancy or to reveal a student's private medical information.



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Dr. William D. Sroufe
Colonial Heights
512 Boulevard
Colonial Heights, VA 23834

RE: Students' Rights Reminder for the 2019-2020 Academic Year

Dear Superintendent,

As our communities prepare for the new academic year and students head back to school, it is important to be aware of the key issues affecting Virginia's students and their rights. Being aware of students' rights under state and federal law can help school officials avoid any potential legal complications and contribute to a positive learning environment that will allow each student to thrive.



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Federal and state laws afford children enrolled in school protection from discrimination and harassment based on race, color, religion, sex, national origin, or disability. Schools are responsible for ensuring these rights are protected and for promoting a safe school atmosphere. Additionally, schools are responsible for ensuring that students' right to free speech is respected and that the freedom to practice their religion—or no religion at all— is upheld.

Summarized below you will find information regarding: student speech rights; the Pledge of Allegiance; censorship; religious beliefs and accommodations; the rights of students who identify as LGBTQ; discipline and arrests; the rights of students with disabilities; the rights of students who are immigrants; and the rights of students who are pregnant.

We hope this information will help your school district understand the rights of students in schools and guide you in taking actions that ensure student rights are protected in a safe and supportive environment. Please do not hesitate to contact the ACLU of Virginia if you have any questions about these issues or if we can be of any assistance to you in evaluating and formulating school policy on any of these matters. We can be reached at (804) 644-8022 or acluva@acluva.org.

Very truly yours,

A handwritten signature in blue ink, which appears to read "Claire G. Gastañaga". The signature is fluid and cursive.

Claire G. Gastañaga
Executive Director



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STUDENT SPEECH RIGHTS

The First Amendment ensures that students cannot be punished for exercising free speech rights, even if administrators do not approve of their message. In the landmark Supreme Court case *Tinker v. Des Moines Independent Community School District*, the ACLU successfully challenged a school district's decision to suspend three students for wearing armbands in protest of the Vietnam War. 393 U.S. 503 (1969). The court declared that students and teachers do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." *Id.* at 506. Over the years, the ACLU has also successfully defended the right of students to wear an anti-abortion armband, a pro-LGBTQ t-shirt, and shirts critical of political figures. Schools may not discipline students for expressing an idea or political viewpoint in class or during school activities, as long as it does not cause a substantial disruption to the school environment.

It is true that the constitutional rights of students in public school are not the same as those of adults exercising First Amendment rights on public streets. Students' speech rights may be limited by reasonable time, place, and manner restrictions because of the unique characteristics of the school environment. A school may limit student speech, for example, through reasonable school-wide policies against cyberbullying. Additionally, schools may prohibit vulgar or offensive speech that is inconsistent with the "fundamental values of public school education." *Bethel Sch. Dist. No. 43 v. Fraser*, 478 U.S. 675, 685-86 (1986).

School officials should take care, however, not to define peaceful assembly as behavior that causes a substantial disruption to school activities. If students engage in a walkout, school officials may choose to discipline students for missing class but may not engage in harsher punishment because of the message or political nature of the action. School officials must not draw distinctions based on the content of a student's speech or expressive activity in imposing discipline.

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CENSORSHIP

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RELIGIOUS BELIEFS AND ACCOMMODATIONS

Free Exercise Clause: Under the First Amendment’s Free Exercise Clause, students have the right to worship as they see fit, with only limited restrictions. This means that while at school, students are free to practice their religion or nonreligion and to express themselves religiously without interference by school officials. Students may, for example, wear religious attire or clothing with religious messaging to school; post religious messages or images on their lockers; or bring religious materials, including religious texts or objects, to school. School officials may not, for instance, require students to remove their hijab, yarmulke, or other head covering, as it substantially burdens the practice of the student’s religion. *See, e.g., Va. Code § 22.1-203.1 et seq.; VIRGINIA STATE BOARD OF EDUCATION, GUIDELINES CONCERNING RELIGIOUS ACTIVITY IN THE PUBLIC SCHOOLS* (1995).

Establishment Clause: Under the First Amendment’s Establishment Clause, school officials cannot favor one religion over another or favor religion over nonbelief. In practice, this means that school officials and teachers cannot conduct prayer or bible-reading sessions, organize or participate in student-led prayer, or hold a prayer at graduation or sporting events, even when participation is voluntary. *See, e.g., Abington Sch. Dist. v. Schempp*, 374 U.S. 203 (1963); *Engel v. Vitale*, 370 U.S. 421 (1962); *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 308 (2000); *Lee v. Weisman*, 505 U.S. 577 (1992). Teachers cannot lead students in devotional activities or encourage student participation in religious activity before or after school, during class, or at school-sponsored activities. In fact, in the public-school context, the Supreme Court has invalidated almost every instance of school- or teacher-sponsored religious expression. Under Virginia law, school boards are permitted to establish a daily observance of one minute of silence, but the school board must be careful to ensure that its policy has secular justifications and is not merely a pretense to encourage prayer. *See, e.g., Va. Code § 22.1-203; VIRGINIA STATE BOARD OF EDUCATION, GUIDELINES CONCERNING RELIGIOUS ACTIVITY IN THE PUBLIC SCHOOLS* (1995).

RIGHTS OF LGBTQ STUDENTS

Cultivating a Safe Environment: Bullying of lesbian, gay, bisexual, transgender, and queer (“LGBTQ”) students has been documented as pervasive at many schools and is all too often ignored, or even encouraged, by school officials. LGBTQ students have a right to live their authentic lives and express themselves at school. Students have a right to be out of the closet at school, and conversely, public schools are not allowed to “out” students publicly. School officials and administrators must ensure they are creating a safe learning environment and protecting LGBTQ students from bullying and harassment. *See, e.g., Title IX, 20 U.S.C. § 1681* (schools may be liable if they act with deliberate indifference in failing to protect students from severe harassment on the basis of sex).



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Restrooms & Locker Rooms: Transgender students must be allowed to use the restroom facilities consistent with their gender identity. Schools cannot create policies that require transgender students to use restrooms or locker rooms that do not correspond with their gender identity, and schools may not create policies that require transgender students to use single-user facilities. *See Grimm v. Gloucester County Sch. Bd.*, Civil No. 4:15-cv-52, 2019 U.S. Dist. Lexis 138246 (E.D. Va. Aug. 9, 2019).

Dress Code: School officials cannot force students to wear clothing inconsistent with their gender identity. Public schools may have dress codes, but dress codes cannot treat students differently based on their gender, force students to conform to sex stereotypes, or censor particular viewpoints. Schools cannot enact dress codes based on the stereotype that only girls can wear some types of clothes and only boys wear other types of clothes. *See, e.g., U.S. v. Virginia*, 518 U.S. 515, 533 (1996) (government actors must not treat male and female students differently because of “overbroad generalizations about the different talents, capacities, or preferences of males and females.”). Schools may, for example, require that skirts be a certain length; however, they cannot require that some students wear skirts and prohibit others from doing so based on the student’s sex or gender expression. This also applies to pants, ties, or other clothing associated with traditional gender roles. And it applies to attire requirements for homecoming, prom, graduation, and other special school events.

Discipline: The intimate relationships of LGBTQ students must be treated with equal dignity as those of heterosexual students. Policies that prohibit same-sex couples or dates from attending prom, homecoming, or other dance functions violates students’ rights under Title IX of the Education Amendments of 1972, the Equal Protection Clause of the U.S. Constitution, and the Bill of Rights of the Virginia Constitution. LGBTQ students should not be punished more severely than heterosexual students for similar behavior, including for displays of affection.

LGBTQ Student Organizations: Students interested in forming a student organization, typically called a gay-straight alliance (“GSA”), are to be treated the same as students forming any other noncurricular organization or club. *See, e.g., 20 U.S.C. § 4071(a)* (if a school allows any noncurricular student group to meet, it cannot deny other groups the same access based on the content of their interest); *Gay All. of Students v. Matthews*, 544 F.2d 162 (4th Cir. 1976).

Gender Markers, Pronouns, and Student Records: Students should be addressed using their preferred names and pronouns. Refusing to do so, or refusing to update the gender markers on a student’s records when provided with appropriate documentation, may be considered a form of sex-based discrimination under federal law. *See Grimm v. Gloucester County Sch. Bd.*, Civil No. 4:15-cv-52, 2019 U.S. Dist. Lexis 138246 (E.D. Va. Aug. 9, 2019). Likewise, a student’s right to privacy includes a student’s sexual orientation or gender identity. It is against the law for school officials to disclose or compel students to disclose this information, even if the student appears open about their sexual orientation or gender identity. *See C.N. v. Wolf*, 410 F. Supp. 2d 894, 903 (C.D. Cal. 2005).



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RIGHTS OF PREGNANT STUDENTS

Schools are prohibited from excluding pregnant students and students with children under Title IX of the Education Amendments of 1972. This means that schools must also ensure that pregnant students or students with children have access to educational instruction, school activities, and reasonable accommodations, to the same extent that students with temporary medical conditions are given access, including the ability to make up missed classwork and learn in a safe, nonjudgmental environment. Schools are also not allowed to punish students who choose to terminate a pregnancy or to reveal a student's private medical information.



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Melinda D. Snead-Johnson
Covington
340 E Walnut St
Covington, VA 24426

RE: Students' Rights Reminder for the 2019-2020 Academic Year

Dear Superintendent,

As our communities prepare for the new academic year and students head back to school, it is important to be aware of the key issues affecting Virginia's students and their rights. Being aware of students' rights under state and federal law can help school officials avoid any potential legal complications and contribute to a positive learning environment that will allow each student to thrive.



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Summarized below you will find information regarding: student speech rights; the Pledge of Allegiance; censorship; religious beliefs and accommodations; the rights of students who identify as LGBTQ; discipline and arrests; the rights of students with disabilities; the rights of students who are immigrants; and the rights of students who are pregnant.

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Claire G. Gastañaga
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Discipline: The intimate relationships of LGBTQ students must be treated with equal dignity as those of heterosexual students. Policies that prohibit same-sex couples or dates from attending prom, homecoming, or other dance functions violates students’ rights under Title IX of the Education Amendments of 1972, the Equal Protection Clause of the U.S. Constitution, and the Bill of Rights of the Virginia Constitution. LGBTQ students should not be punished more severely than heterosexual students for similar behavior, including for displays of affection.

LGBTQ Student Organizations: Students interested in forming a student organization, typically called a gay-straight alliance (“GSA”), are to be treated the same as students forming any other noncurricular organization or club. *See, e.g., 20 U.S.C. § 4071(a)* (if a school allows any noncurricular student group to meet, it cannot deny other groups the same access based on the content of their interest); *Gay All. of Students v. Matthews*, 544 F.2d 162 (4th Cir. 1976).

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DISCIPLINE AND ARRESTS

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Due Process: The U.S. Constitution requires that students receive due process before disciplinary measures are imposed. This means that school officials must follow certain procedures before they can suspend or expel students from school. Students are generally entitled to receive notice prior to any suspension or expulsion. The notice must include the facts concerning the suspension or expulsion, and the basis for any accusations. The notice must also provide students an opportunity to explain their side. *See, e.g., Goss v. Lopez*, 419 U.S. 565 (1975). For Virginia’s specific procedural requirements, see Va. Code § 22.1-276.01 *et seq.*

Corporal Punishment: Corporal or physical punishment of students is strictly prohibited by Virginia law. *See* Va. Code § 22.1-279.1.

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Students with disabilities are provided legal protections under several federal laws. The Individuals with Disabilities Education Act (“IDEA”) requires that public schools provide eligible students with disabilities a “free, appropriate public education” in the least restrictive environment. *See* 20 U.S.C. § 1400 *et seq.* As part of the IDEA, schools must affirmatively locate, identify, and evaluate children in their district for special education and related services, a process known as “child find.” Parents may also request an evaluation at any time in writing or by speaking to a teacher or administrator, and the school district must respond to the parent’s request. Schools must educate students with disabilities in the least restrictive setting possible, with an emphasis on inclusion and integration in the regular education classroom where feasible. Additionally, students receiving special education services under the IDEA, as well as students suspected of being eligible to receive services, are entitled to certain protections and safeguards in the school discipline process. *See* 34 C.F.R. § 300.530 *et seq.*

Students with disabilities are also provided with protections under Section 504 of the Rehabilitation Act of 1974 (“Section 504”) and Title II of the Americans with Disabilities Act (“ADA”). Section 504 and the ADA prohibit discrimination against students with disabilities. This means that schools are prohibited by federal law from denying students with disabilities equal access to academic courses, field trips, extracurricular activities, school technology, and health services. School officials also have a duty to ensure that students with disabilities are not being discriminated against by being denied necessary accommodations. Restricting access to educational activities and opportunities, ignoring harassment and bullying, and failing to train staff on compliance with these laws is also prohibited under Section 504 and the ADA. *See also* Va. Code § 22.1-213 *et seq.*

RIGHTS OF IMMIGRANT STUDENTS

Schools cannot discriminate against students on the basis of race, color, or national origin. This includes discriminating against students on the basis of their immigration status. Undocumented students have a right to a free public education in your school district regardless of their immigration status, and schools cannot deny students of this right. *See, e.g., Plyler v. Doe*, 457 U.S. 202 (1982). Likewise, schools are not permitted to deny enrollment to a student based on their undocumented status; treat a student differently to determine residency; make inquiries of students or parents that may expose their undocumented status; require social security numbers from parents or students for purposes of enrollment; or engage in any other practices which may chill the right of access to school. Schools cannot turn away students with limited English proficiency; they must be provided with language instruction. *See, e.g., Lau v. Nichols*, 414 U.S. 563 (1974).

School officials should not allow immigration enforcement actions on school grounds without a judicial warrant based on probable cause that a criminal violation of the immigration laws has occurred. Schools should not call immigration authorities on students or consent to any immigration enforcement on school grounds without a criminal warrant. There is no state law requiring any state or local official to contact immigration officials nor any state or federal law prohibiting adoption of a policy that protects students and teachers from immigration action in the absence of a judicial criminal warrant.

RIGHTS OF PREGNANT STUDENTS

Schools are prohibited from excluding pregnant students and students with children under Title IX of the Education Amendments of 1972. This means that schools must also ensure that pregnant students or students with children have access to educational instruction, school activities, and reasonable accommodations, to the same extent that students with temporary medical conditions are given access, including the ability to make up missed classwork and learn in a safe, nonjudgmental environment. Schools are also not allowed to punish students who choose to terminate a pregnancy or to reveal a student's private medical information.



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Ms. Jeanette Day Warwick
Craig County
PO Box 245
New Castle, VA 24127

RE: Students' Rights Reminder for the 2019-2020 Academic Year

Dear Superintendent,

As our communities prepare for the new academic year and students head back to school, it is important to be aware of the key issues affecting Virginia's students and their rights. Being aware of students' rights under state and federal law can help school officials avoid any potential legal complications and contribute to a positive learning environment that will allow each student to thrive.



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Federal and state laws afford children enrolled in school protection from discrimination and harassment based on race, color, religion, sex, national origin, or disability. Schools are responsible for ensuring these rights are protected and for promoting a safe school atmosphere. Additionally, schools are responsible for ensuring that students' right to free speech is respected and that the freedom to practice their religion—or no religion at all— is upheld.

Summarized below you will find information regarding: student speech rights; the Pledge of Allegiance; censorship; religious beliefs and accommodations; the rights of students who identify as LGBTQ; discipline and arrests; the rights of students with disabilities; the rights of students who are immigrants; and the rights of students who are pregnant.

We hope this information will help your school district understand the rights of students in schools and guide you in taking actions that ensure student rights are protected in a safe and supportive environment. Please do not hesitate to contact the ACLU of Virginia if you have any questions about these issues or if we can be of any assistance to you in evaluating and formulating school policy on any of these matters. We can be reached at (804) 644-8022 or acluva@acluva.org.

Very truly yours,

A handwritten signature in blue ink, which appears to read "Claire G. Gastañaga". The signature is fluid and cursive.

Claire G. Gastañaga
Executive Director



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STUDENT SPEECH RIGHTS

The First Amendment ensures that students cannot be punished for exercising free speech rights, even if administrators do not approve of their message. In the landmark Supreme Court case *Tinker v. Des Moines Independent Community School District*, the ACLU successfully challenged a school district's decision to suspend three students for wearing armbands in protest of the Vietnam War. 393 U.S. 503 (1969). The court declared that students and teachers do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." *Id.* at 506. Over the years, the ACLU has also successfully defended the right of students to wear an anti-abortion armband, a pro-LGBTQ t-shirt, and shirts critical of political figures. Schools may not discipline students for expressing an idea or political viewpoint in class or during school activities, as long as it does not cause a substantial disruption to the school environment.

It is true that the constitutional rights of students in public school are not the same as those of adults exercising First Amendment rights on public streets. Students' speech rights may be limited by reasonable time, place, and manner restrictions because of the unique characteristics of the school environment. A school may limit student speech, for example, through reasonable school-wide policies against cyberbullying. Additionally, schools may prohibit vulgar or offensive speech that is inconsistent with the "fundamental values of public school education." *Bethel Sch. Dist. No. 43 v. Fraser*, 478 U.S. 675, 685-86 (1986).

School officials should take care, however, not to define peaceful assembly as behavior that causes a substantial disruption to school activities. If students engage in a walkout, school officials may choose to discipline students for missing class but may not engage in harsher punishment because of the message or political nature of the action. School officials must not draw distinctions based on the content of a student's speech or expressive activity in imposing discipline.

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Schools cannot punish students for refusing to salute the flag or say the Pledge of Allegiance. *W.Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624 (1943); *Sherman v. Comm. Consol. Sch. Dist. 21*, 980 F.2d 437 (7th Cir. 1992). School officials also cannot force students to stand during the Pledge of Allegiance or leave the room if a student refuses to recite the Pledge. *See* Va. Code § 22.1-202(C) ("[N]o student shall be compelled to recite the Pledge if he, his parent or legal guardian objects on religious, philosophical or other grounds to his participating in this exercise.")

CENSORSHIP

Books: Banning books, removing books and materials from a classroom or library, or otherwise making it difficult for students to read a broad array of literature limits intellectual freedom. Making books and ideas unavailable based on their content or viewpoint or taking books out of schools because they are controversial, unpopular, or offensive, may violate the First Amendment. *See, e.g., Bd. of Educ. v. Pico*, 457 U.S. 853 (1982). Courts view school libraries as the main place where students exercise their freedom "to inquire, to study and to evaluate, to gain new maturity and understanding." *Id.* at 868.

Student Publications: Schools may review and control the content of school sponsored student publications including student newspapers, yearbooks, literary magazines, on-campus videos, and radio broadcasts. But schools cannot control student publications that are not sponsored or funded by the school, not done as part of a class or school project, or that are done on a student’s own time with their own resources. *See, e.g., Burt v. Barker*, 861 F.2d 1149 (9th Cir. 1988); *Fujishima v. Bd. of Ed.*, 160 F.2d 1355 (7th Cir. 1972); *Eisner v. Stanford Bd. of Ed.*, 440 F.2d 803 (2d Cir. 1971).

RELIGIOUS BELIEFS AND ACCOMMODATIONS

Free Exercise Clause: Under the First Amendment’s Free Exercise Clause, students have the right to worship as they see fit, with only limited restrictions. This means that while at school, students are free to practice their religion or nonreligion and to express themselves religiously without interference by school officials. Students may, for example, wear religious attire or clothing with religious messaging to school; post religious messages or images on their lockers; or bring religious materials, including religious texts or objects, to school. School officials may not, for instance, require students to remove their hijab, yarmulke, or other head covering, as it substantially burdens the practice of the student’s religion. *See, e.g., Va. Code § 22.1-203.1 et seq.; VIRGINIA STATE BOARD OF EDUCATION, GUIDELINES CONCERNING RELIGIOUS ACTIVITY IN THE PUBLIC SCHOOLS* (1995).

Establishment Clause: Under the First Amendment’s Establishment Clause, school officials cannot favor one religion over another or favor religion over nonbelief. In practice, this means that school officials and teachers cannot conduct prayer or bible-reading sessions, organize or participate in student-led prayer, or hold a prayer at graduation or sporting events, even when participation is voluntary. *See, e.g., Abington Sch. Dist. v. Schempp*, 374 U.S. 203 (1963); *Engel v. Vitale*, 370 U.S. 421 (1962); *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 308 (2000); *Lee v. Weisman*, 505 U.S. 577 (1992). Teachers cannot lead students in devotional activities or encourage student participation in religious activity before or after school, during class, or at school-sponsored activities. In fact, in the public-school context, the Supreme Court has invalidated almost every instance of school- or teacher-sponsored religious expression. Under Virginia law, school boards are permitted to establish a daily observance of one minute of silence, but the school board must be careful to ensure that its policy has secular justifications and is not merely a pretense to encourage prayer. *See, e.g., Va. Code § 22.1-203; VIRGINIA STATE BOARD OF EDUCATION, GUIDELINES CONCERNING RELIGIOUS ACTIVITY IN THE PUBLIC SCHOOLS* (1995).

RIGHTS OF LGBTQ STUDENTS

Cultivating a Safe Environment: Bullying of lesbian, gay, bisexual, transgender, and queer (“LGBTQ”) students has been documented as pervasive at many schools and is all too often ignored, or even encouraged, by school officials. LGBTQ students have a right to live their authentic lives and express themselves at school. Students have a right to be out of the closet at school, and conversely, public schools are not allowed to “out” students publicly. School officials and administrators must ensure they are creating a safe learning environment and protecting LGBTQ students from bullying and harassment. *See, e.g., Title IX, 20 U.S.C. § 1681* (schools may be liable if they act with deliberate indifference in failing to protect students from severe harassment on the basis of sex).



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Dr. Anthony S. Brads
Culpeper County
450 Radio Lane
Culpeper, VA 22701

RE: Students' Rights Reminder for the 2019-2020 Academic Year

Dear Superintendent,

As our communities prepare for the new academic year and students head back to school, it is important to be aware of the key issues affecting Virginia's students and their rights. Being aware of students' rights under state and federal law can help school officials avoid any potential legal complications and contribute to a positive learning environment that will allow each student to thrive.



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Claire G. Gastañaga
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Student Publications: Schools may review and control the content of school sponsored student publications including student newspapers, yearbooks, literary magazines, on-campus videos, and radio broadcasts. But schools cannot control student publications that are not sponsored or funded by the school, not done as part of a class or school project, or that are done on a student’s own time with their own resources. *See, e.g., Burt v. Barker*, 861 F.2d 1149 (9th Cir. 1988); *Fujishima v. Bd. of Ed.*, 160 F.2d 1355 (7th Cir. 1972); *Eisner v. Stanford Bd. of Ed.*, 440 F.2d 803 (2d Cir. 1971).

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Cultivating a Safe Environment: Bullying of lesbian, gay, bisexual, transgender, and queer (“LGBTQ”) students has been documented as pervasive at many schools and is all too often ignored, or even encouraged, by school officials. LGBTQ students have a right to live their authentic lives and express themselves at school. Students have a right to be out of the closet at school, and conversely, public schools are not allowed to “out” students publicly. School officials and administrators must ensure they are creating a safe learning environment and protecting LGBTQ students from bullying and harassment. *See, e.g., Title IX, 20 U.S.C. § 1681* (schools may be liable if they act with deliberate indifference in failing to protect students from severe harassment on the basis of sex).



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Corporal Punishment: Corporal or physical punishment of students is strictly prohibited by Virginia law. *See* Va. Code § 22.1-279.1.

School Resource Officers: School Resource Officers (“SROs”) can protect students from outside danger, but often punish minor behaviors through ticketing and arrests. Law enforcement intervention should typically be a last resort for minor violations best handled by schools as discipline issues. For additional resources on how to limit disproportionate school-based arrests or referrals to law enforcement, visit the Model Guidance for Positive, Preventative Code of Student Conduct Policy and Alternatives to Suspension, available at http://www.doe.virginia.gov/support/student_conduct/index.shtml.



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Students with disabilities are also provided with protections under Section 504 of the Rehabilitation Act of 1974 (“Section 504”) and Title II of the Americans with Disabilities Act (“ADA”). Section 504 and the ADA prohibit discrimination against students with disabilities. This means that schools are prohibited by federal law from denying students with disabilities equal access to academic courses, field trips, extracurricular activities, school technology, and health services. School officials also have a duty to ensure that students with disabilities are not being discriminated against by being denied necessary accommodations. Restricting access to educational activities and opportunities, ignoring harassment and bullying, and failing to train staff on compliance with these laws is also prohibited under Section 504 and the ADA. *See also* Va. Code § 22.1-213 *et seq.*

RIGHTS OF IMMIGRANT STUDENTS

Schools cannot discriminate against students on the basis of race, color, or national origin. This includes discriminating against students on the basis of their immigration status. Undocumented students have a right to a free public education in your school district regardless of their immigration status, and schools cannot deny students of this right. *See, e.g., Plyler v. Doe*, 457 U.S. 202 (1982). Likewise, schools are not permitted to deny enrollment to a student based on their undocumented status; treat a student differently to determine residency; make inquiries of students or parents that may expose their undocumented status; require social security numbers from parents or students for purposes of enrollment; or engage in any other practices which may chill the right of access to school. Schools cannot turn away students with limited English proficiency; they must be provided with language instruction. *See, e.g., Lau v. Nichols*, 414 U.S. 563 (1974).

School officials should not allow immigration enforcement actions on school grounds without a judicial warrant based on probable cause that a criminal violation of the immigration laws has occurred. Schools should not call immigration authorities on students or consent to any immigration enforcement on school grounds without a criminal warrant. There is no state law requiring any state or local official to contact immigration officials nor any state or federal law prohibiting adoption of a policy that protects students and teachers from immigration action in the absence of a judicial criminal warrant.

RIGHTS OF PREGNANT STUDENTS

Schools are prohibited from excluding pregnant students and students with children under Title IX of the Education Amendments of 1972. This means that schools must also ensure that pregnant students or students with children have access to educational instruction, school activities, and reasonable accommodations, to the same extent that students with temporary medical conditions are given access, including the ability to make up missed classwork and learn in a safe, nonjudgmental environment. Schools are also not allowed to punish students who choose to terminate a pregnancy or to reveal a student's private medical information.



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Dr. Amy Griffin
Cumberland County
PO Box 170
Cumberland, VA 23040

RE: Students' Rights Reminder for the 2019-2020 Academic Year

Dear Superintendent,

As our communities prepare for the new academic year and students head back to school, it is important to be aware of the key issues affecting Virginia's students and their rights. Being aware of students' rights under state and federal law can help school officials avoid any potential legal complications and contribute to a positive learning environment that will allow each student to thrive.



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Federal and state laws afford children enrolled in school protection from discrimination and harassment based on race, color, religion, sex, national origin, or disability. Schools are responsible for ensuring these rights are protected and for promoting a safe school atmosphere. Additionally, schools are responsible for ensuring that students' right to free speech is respected and that the freedom to practice their religion—or no religion at all— is upheld.

Summarized below you will find information regarding: student speech rights; the Pledge of Allegiance; censorship; religious beliefs and accommodations; the rights of students who identify as LGBTQ; discipline and arrests; the rights of students with disabilities; the rights of students who are immigrants; and the rights of students who are pregnant.

We hope this information will help your school district understand the rights of students in schools and guide you in taking actions that ensure student rights are protected in a safe and supportive environment. Please do not hesitate to contact the ACLU of Virginia if you have any questions about these issues or if we can be of any assistance to you in evaluating and formulating school policy on any of these matters. We can be reached at (804) 644-8022 or acluva@acluva.org.

Very truly yours,

A handwritten signature in blue ink, which appears to read "Claire G. Gastañaga". The signature is fluid and cursive.

Claire G. Gastañaga
Executive Director



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STUDENT SPEECH RIGHTS

The First Amendment ensures that students cannot be punished for exercising free speech rights, even if administrators do not approve of their message. In the landmark Supreme Court case *Tinker v. Des Moines Independent Community School District*, the ACLU successfully challenged a school district's decision to suspend three students for wearing armbands in protest of the Vietnam War. 393 U.S. 503 (1969). The court declared that students and teachers do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." *Id.* at 506. Over the years, the ACLU has also successfully defended the right of students to wear an anti-abortion armband, a pro-LGBTQ t-shirt, and shirts critical of political figures. Schools may not discipline students for expressing an idea or political viewpoint in class or during school activities, as long as it does not cause a substantial disruption to the school environment.

It is true that the constitutional rights of students in public school are not the same as those of adults exercising First Amendment rights on public streets. Students' speech rights may be limited by reasonable time, place, and manner restrictions because of the unique characteristics of the school environment. A school may limit student speech, for example, through reasonable school-wide policies against cyberbullying. Additionally, schools may prohibit vulgar or offensive speech that is inconsistent with the "fundamental values of public school education." *Bethel Sch. Dist. No. 43 v. Fraser*, 478 U.S. 675, 685-86 (1986).

School officials should take care, however, not to define peaceful assembly as behavior that causes a substantial disruption to school activities. If students engage in a walkout, school officials may choose to discipline students for missing class but may not engage in harsher punishment because of the message or political nature of the action. School officials must not draw distinctions based on the content of a student's speech or expressive activity in imposing discipline.

PLEDGE OF ALLEGIANCE

Schools cannot punish students for refusing to salute the flag or say the Pledge of Allegiance. *W.Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624 (1943); *Sherman v. Comm. Consol. Sch. Dist. 21*, 980 F.2d 437 (7th Cir. 1992). School officials also cannot force students to stand during the Pledge of Allegiance or leave the room if a student refuses to recite the Pledge. *See* Va. Code § 22.1-202(C) ("[N]o student shall be compelled to recite the Pledge if he, his parent or legal guardian objects on religious, philosophical or other grounds to his participating in this exercise.")

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Dr. Stanley B. Jones
Danville
PO Box 9600
Danville, VA 24543

RE: Students' Rights Reminder for the 2019-2020 Academic Year

Dear Superintendent,

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Summarized below you will find information regarding: student speech rights; the Pledge of Allegiance; censorship; religious beliefs and accommodations; the rights of students who identify as LGBTQ; discipline and arrests; the rights of students with disabilities; the rights of students who are immigrants; and the rights of students who are pregnant.

We hope this information will help your school district understand the rights of students in schools and guide you in taking actions that ensure student rights are protected in a safe and supportive environment. Please do not hesitate to contact the ACLU of Virginia if you have any questions about these issues or if we can be of any assistance to you in evaluating and formulating school policy on any of these matters. We can be reached at (804) 644-8022 or acluva@acluva.org.

Very truly yours,

A handwritten signature in blue ink, which appears to read "Claire G. Gastañaga". The signature is fluid and cursive.

Claire G. Gastañaga
Executive Director



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STUDENT SPEECH RIGHTS

The First Amendment ensures that students cannot be punished for exercising free speech rights, even if administrators do not approve of their message. In the landmark Supreme Court case *Tinker v. Des Moines Independent Community School District*, the ACLU successfully challenged a school district's decision to suspend three students for wearing armbands in protest of the Vietnam War. 393 U.S. 503 (1969). The court declared that students and teachers do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." *Id.* at 506. Over the years, the ACLU has also successfully defended the right of students to wear an anti-abortion armband, a pro-LGBTQ t-shirt, and shirts critical of political figures. Schools may not discipline students for expressing an idea or political viewpoint in class or during school activities, as long as it does not cause a substantial disruption to the school environment.

It is true that the constitutional rights of students in public school are not the same as those of adults exercising First Amendment rights on public streets. Students' speech rights may be limited by reasonable time, place, and manner restrictions because of the unique characteristics of the school environment. A school may limit student speech, for example, through reasonable school-wide policies against cyberbullying. Additionally, schools may prohibit vulgar or offensive speech that is inconsistent with the "fundamental values of public school education." *Bethel Sch. Dist. No. 43 v. Fraser*, 478 U.S. 675, 685-86 (1986).

School officials should take care, however, not to define peaceful assembly as behavior that causes a substantial disruption to school activities. If students engage in a walkout, school officials may choose to discipline students for missing class but may not engage in harsher punishment because of the message or political nature of the action. School officials must not draw distinctions based on the content of a student's speech or expressive activity in imposing discipline.

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Schools cannot punish students for refusing to salute the flag or say the Pledge of Allegiance. *W.Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624 (1943); *Sherman v. Comm. Consol. Sch. Dist. 21*, 980 F.2d 437 (7th Cir. 1992). School officials also cannot force students to stand during the Pledge of Allegiance or leave the room if a student refuses to recite the Pledge. *See* Va. Code § 22.1-202(C) ("[N]o student shall be compelled to recite the Pledge if he, his parent or legal guardian objects on religious, philosophical or other grounds to his participating in this exercise.")

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RELIGIOUS BELIEFS AND ACCOMMODATIONS

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RIGHTS OF LGBTQ STUDENTS

Cultivating a Safe Environment: Bullying of lesbian, gay, bisexual, transgender, and queer (“LGBTQ”) students has been documented as pervasive at many schools and is all too often ignored, or even encouraged, by school officials. LGBTQ students have a right to live their authentic lives and express themselves at school. Students have a right to be out of the closet at school, and conversely, public schools are not allowed to “out” students publicly. School officials and administrators must ensure they are creating a safe learning environment and protecting LGBTQ students from bullying and harassment. *See, e.g., Title IX, 20 U.S.C. § 1681* (schools may be liable if they act with deliberate indifference in failing to protect students from severe harassment on the basis of sex).



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Discipline: The intimate relationships of LGBTQ students must be treated with equal dignity as those of heterosexual students. Policies that prohibit same-sex couples or dates from attending prom, homecoming, or other dance functions violates students’ rights under Title IX of the Education Amendments of 1972, the Equal Protection Clause of the U.S. Constitution, and the Bill of Rights of the Virginia Constitution. LGBTQ students should not be punished more severely than heterosexual students for similar behavior, including for displays of affection.

LGBTQ Student Organizations: Students interested in forming a student organization, typically called a gay-straight alliance (“GSA”), are to be treated the same as students forming any other noncurricular organization or club. *See, e.g., 20 U.S.C. § 4071(a)* (if a school allows any noncurricular student group to meet, it cannot deny other groups the same access based on the content of their interest); *Gay All. of Students v. Matthews*, 544 F.2d 162 (4th Cir. 1976).

Gender Markers, Pronouns, and Student Records: Students should be addressed using their preferred names and pronouns. Refusing to do so, or refusing to update the gender markers on a student’s records when provided with appropriate documentation, may be considered a form of sex-based discrimination under federal law. *See Grimm v. Gloucester County Sch. Bd.*, Civil No. 4:15-cv-52, 2019 U.S. Dist. Lexis 138246 (E.D. Va. Aug. 9, 2019). Likewise, a student’s right to privacy includes a student’s sexual orientation or gender identity. It is against the law for school officials to disclose or compel students to disclose this information, even if the student appears open about their sexual orientation or gender identity. *See C.N. v. Wolf*, 410 F. Supp. 2d 894, 903 (C.D. Cal. 2005).



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DISCIPLINE AND ARRESTS

Generally: School discipline policies and practices should be fair and equitable and should prioritize prevention and intervention rather than harsh punishments like suspension, expulsion, and referral to law enforcement. The goal of discipline should be to teach appropriate behaviors and minimize the time students spend out of class. In Spring 2015, the Center for Public Integrity released a study finding that Virginia led the country in schools referring students to law enforcement, a phenomenon known as the “school-to-prison pipeline.” Additional studies conducted by the Virginia Department of Education found that African American students and students with disabilities were disproportionately represented in both suspensions and referrals to law enforcement throughout Virginia schools. These disparities open up school districts to potential legal challenges for race and disability discrimination under federal civil rights laws. *See, e.g.*, Complaint against Richmond Public Schools, available at <https://acluva.org/en/cases/equal-treatment-richmond-public-school-students>. In order to avoid potential legal problems, and to provide a more equitable school environment, school officials should reevaluate and revise their current discipline policies and practices to create a more positive and preventative approach to student conduct. The Virginia Board of Education has provided a blueprint for schools to use in revising their outdated practices – the Model Guidance for Positive, Preventative Code of Student Conduct Policy and Alternatives to Suspension, available at http://www.doe.virginia.gov/support/student_conduct/index.shtml.

Due Process: The U.S. Constitution requires that students receive due process before disciplinary measures are imposed. This means that school officials must follow certain procedures before they can suspend or expel students from school. Students are generally entitled to receive notice prior to any suspension or expulsion. The notice must include the facts concerning the suspension or expulsion, and the basis for any accusations. The notice must also provide students an opportunity to explain their side. *See, e.g., Goss v. Lopez*, 419 U.S. 565 (1975). For Virginia’s specific procedural requirements, see Va. Code § 22.1-276.01 *et seq.*

Corporal Punishment: Corporal or physical punishment of students is strictly prohibited by Virginia law. *See* Va. Code § 22.1-279.1.

School Resource Officers: School Resource Officers (“SROs”) can protect students from outside danger, but often punish minor behaviors through ticketing and arrests. Law enforcement intervention should typically be a last resort for minor violations best handled by schools as discipline issues. For additional resources on how to limit disproportionate school-based arrests or referrals to law enforcement, visit the Model Guidance for Positive, Preventative Code of Student Conduct Policy and Alternatives to Suspension, available at http://www.doe.virginia.gov/support/student_conduct/index.shtml.



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RIGHTS OF STUDENTS WITH DISABILITIES

Students with disabilities are provided legal protections under several federal laws. The Individuals with Disabilities Education Act (“IDEA”) requires that public schools provide eligible students with disabilities a “free, appropriate public education” in the least restrictive environment. *See* 20 U.S.C. § 1400 *et seq.* As part of the IDEA, schools must affirmatively locate, identify, and evaluate children in their district for special education and related services, a process known as “child find.” Parents may also request an evaluation at any time in writing or by speaking to a teacher or administrator, and the school district must respond to the parent’s request. Schools must educate students with disabilities in the least restrictive setting possible, with an emphasis on inclusion and integration in the regular education classroom where feasible. Additionally, students receiving special education services under the IDEA, as well as students suspected of being eligible to receive services, are entitled to certain protections and safeguards in the school discipline process. *See* 34 C.F.R. § 300.530 *et seq.*

Students with disabilities are also provided with protections under Section 504 of the Rehabilitation Act of 1974 (“Section 504”) and Title II of the Americans with Disabilities Act (“ADA”). Section 504 and the ADA prohibit discrimination against students with disabilities. This means that schools are prohibited by federal law from denying students with disabilities equal access to academic courses, field trips, extracurricular activities, school technology, and health services. School officials also have a duty to ensure that students with disabilities are not being discriminated against by being denied necessary accommodations. Restricting access to educational activities and opportunities, ignoring harassment and bullying, and failing to train staff on compliance with these laws is also prohibited under Section 504 and the ADA. *See also* Va. Code § 22.1-213 *et seq.*

RIGHTS OF IMMIGRANT STUDENTS

Schools cannot discriminate against students on the basis of race, color, or national origin. This includes discriminating against students on the basis of their immigration status. Undocumented students have a right to a free public education in your school district regardless of their immigration status, and schools cannot deny students of this right. *See, e.g., Plyler v. Doe*, 457 U.S. 202 (1982). Likewise, schools are not permitted to deny enrollment to a student based on their undocumented status; treat a student differently to determine residency; make inquiries of students or parents that may expose their undocumented status; require social security numbers from parents or students for purposes of enrollment; or engage in any other practices which may chill the right of access to school. Schools cannot turn away students with limited English proficiency; they must be provided with language instruction. *See, e.g., Lau v. Nichols*, 414 U.S. 563 (1974).

School officials should not allow immigration enforcement actions on school grounds without a judicial warrant based on probable cause that a criminal violation of the immigration laws has occurred. Schools should not call immigration authorities on students or consent to any immigration enforcement on school grounds without a criminal warrant. There is no state law requiring any state or local official to contact immigration officials nor any state or federal law prohibiting adoption of a policy that protects students and teachers from immigration action in the absence of a judicial criminal warrant.

RIGHTS OF PREGNANT STUDENTS

Schools are prohibited from excluding pregnant students and students with children under Title IX of the Education Amendments of 1972. This means that schools must also ensure that pregnant students or students with children have access to educational instruction, school activities, and reasonable accommodations, to the same extent that students with temporary medical conditions are given access, including the ability to make up missed classwork and learn in a safe, nonjudgmental environment. Schools are also not allowed to punish students who choose to terminate a pregnancy or to reveal a student's private medical information.



AMERICAN CIVIL LIBERTIES UNION
FOUNDATION

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Mrs. Haydee Robinson
Dickenson County
P.O. Box 1127
Clintwood, VA 24228

RE: Students' Rights Reminder for the 2019-2020 Academic Year

Dear Superintendent,

As our communities prepare for the new academic year and students head back to school, it is important to be aware of the key issues affecting Virginia's students and their rights. Being aware of students' rights under state and federal law can help school officials avoid any potential legal complications and contribute to a positive learning environment that will allow each student to thrive.



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RIGHTS OF STUDENTS WITH DISABILITIES

Students with disabilities are provided legal protections under several federal laws. The Individuals with Disabilities Education Act (“IDEA”) requires that public schools provide eligible students with disabilities a “free, appropriate public education” in the least restrictive environment. *See* 20 U.S.C. § 1400 *et seq.* As part of the IDEA, schools must affirmatively locate, identify, and evaluate children in their district for special education and related services, a process known as “child find.” Parents may also request an evaluation at any time in writing or by speaking to a teacher or administrator, and the school district must respond to the parent’s request. Schools must educate students with disabilities in the least restrictive setting possible, with an emphasis on inclusion and integration in the regular education classroom where feasible. Additionally, students receiving special education services under the IDEA, as well as students suspected of being eligible to receive services, are entitled to certain protections and safeguards in the school discipline process. *See* 34 C.F.R. § 300.530 *et seq.*

Students with disabilities are also provided with protections under Section 504 of the Rehabilitation Act of 1974 (“Section 504”) and Title II of the Americans with Disabilities Act (“ADA”). Section 504 and the ADA prohibit discrimination against students with disabilities. This means that schools are prohibited by federal law from denying students with disabilities equal access to academic courses, field trips, extracurricular activities, school technology, and health services. School officials also have a duty to ensure that students with disabilities are not being discriminated against by being denied necessary accommodations. Restricting access to educational activities and opportunities, ignoring harassment and bullying, and failing to train staff on compliance with these laws is also prohibited under Section 504 and the ADA. *See also* Va. Code § 22.1-213 *et seq.*

RIGHTS OF IMMIGRANT STUDENTS

Schools cannot discriminate against students on the basis of race, color, or national origin. This includes discriminating against students on the basis of their immigration status. Undocumented students have a right to a free public education in your school district regardless of their immigration status, and schools cannot deny students of this right. *See, e.g., Plyler v. Doe*, 457 U.S. 202 (1982). Likewise, schools are not permitted to deny enrollment to a student based on their undocumented status; treat a student differently to determine residency; make inquiries of students or parents that may expose their undocumented status; require social security numbers from parents or students for purposes of enrollment; or engage in any other practices which may chill the right of access to school. Schools cannot turn away students with limited English proficiency; they must be provided with language instruction. *See, e.g., Lau v. Nichols*, 414 U.S. 563 (1974).

School officials should not allow immigration enforcement actions on school grounds without a judicial warrant based on probable cause that a criminal violation of the immigration laws has occurred. Schools should not call immigration authorities on students or consent to any immigration enforcement on school grounds without a criminal warrant. There is no state law requiring any state or local official to contact immigration officials nor any state or federal law prohibiting adoption of a policy that protects students and teachers from immigration action in the absence of a judicial criminal warrant.

RIGHTS OF PREGNANT STUDENTS

Schools are prohibited from excluding pregnant students and students with children under Title IX of the Education Amendments of 1972. This means that schools must also ensure that pregnant students or students with children have access to educational instruction, school activities, and reasonable accommodations, to the same extent that students with temporary medical conditions are given access, including the ability to make up missed classwork and learn in a safe, nonjudgmental environment. Schools are also not allowed to punish students who choose to terminate a pregnancy or to reveal a student's private medical information.



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Dr. Kari Weston
Dinwiddie County
P.O. Box 7
Dinwiddie, VA 23841

RE: Students' Rights Reminder for the 2019-2020 Academic Year

Dear Superintendent,

As our communities prepare for the new academic year and students head back to school, it is important to be aware of the key issues affecting Virginia's students and their rights. Being aware of students' rights under state and federal law can help school officials avoid any potential legal complications and contribute to a positive learning environment that will allow each student to thrive.



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Federal and state laws afford children enrolled in school protection from discrimination and harassment based on race, color, religion, sex, national origin, or disability. Schools are responsible for ensuring these rights are protected and for promoting a safe school atmosphere. Additionally, schools are responsible for ensuring that students' right to free speech is respected and that the freedom to practice their religion—or no religion at all— is upheld.

Summarized below you will find information regarding: student speech rights; the Pledge of Allegiance; censorship; religious beliefs and accommodations; the rights of students who identify as LGBTQ; discipline and arrests; the rights of students with disabilities; the rights of students who are immigrants; and the rights of students who are pregnant.

We hope this information will help your school district understand the rights of students in schools and guide you in taking actions that ensure student rights are protected in a safe and supportive environment. Please do not hesitate to contact the ACLU of Virginia if you have any questions about these issues or if we can be of any assistance to you in evaluating and formulating school policy on any of these matters. We can be reached at (804) 644-8022 or acluva@acluva.org.

Very truly yours,

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Claire G. Gastañaga
Executive Director



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STUDENT SPEECH RIGHTS

The First Amendment ensures that students cannot be punished for exercising free speech rights, even if administrators do not approve of their message. In the landmark Supreme Court case *Tinker v. Des Moines Independent Community School District*, the ACLU successfully challenged a school district's decision to suspend three students for wearing armbands in protest of the Vietnam War. 393 U.S. 503 (1969). The court declared that students and teachers do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." *Id.* at 506. Over the years, the ACLU has also successfully defended the right of students to wear an anti-abortion armband, a pro-LGBTQ t-shirt, and shirts critical of political figures. Schools may not discipline students for expressing an idea or political viewpoint in class or during school activities, as long as it does not cause a substantial disruption to the school environment.

It is true that the constitutional rights of students in public school are not the same as those of adults exercising First Amendment rights on public streets. Students' speech rights may be limited by reasonable time, place, and manner restrictions because of the unique characteristics of the school environment. A school may limit student speech, for example, through reasonable school-wide policies against cyberbullying. Additionally, schools may prohibit vulgar or offensive speech that is inconsistent with the "fundamental values of public school education." *Bethel Sch. Dist. No. 43 v. Fraser*, 478 U.S. 675, 685-86 (1986).

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RELIGIOUS BELIEFS AND ACCOMMODATIONS

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RIGHTS OF LGBTQ STUDENTS

Cultivating a Safe Environment: Bullying of lesbian, gay, bisexual, transgender, and queer (“LGBTQ”) students has been documented as pervasive at many schools and is all too often ignored, or even encouraged, by school officials. LGBTQ students have a right to live their authentic lives and express themselves at school. Students have a right to be out of the closet at school, and conversely, public schools are not allowed to “out” students publicly. School officials and administrators must ensure they are creating a safe learning environment and protecting LGBTQ students from bullying and harassment. *See, e.g., Title IX, 20 U.S.C. § 1681* (schools may be liable if they act with deliberate indifference in failing to protect students from severe harassment on the basis of sex).



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Discipline: The intimate relationships of LGBTQ students must be treated with equal dignity as those of heterosexual students. Policies that prohibit same-sex couples or dates from attending prom, homecoming, or other dance functions violates students’ rights under Title IX of the Education Amendments of 1972, the Equal Protection Clause of the U.S. Constitution, and the Bill of Rights of the Virginia Constitution. LGBTQ students should not be punished more severely than heterosexual students for similar behavior, including for displays of affection.

LGBTQ Student Organizations: Students interested in forming a student organization, typically called a gay-straight alliance (“GSA”), are to be treated the same as students forming any other noncurricular organization or club. *See, e.g., 20 U.S.C. § 4071(a)* (if a school allows any noncurricular student group to meet, it cannot deny other groups the same access based on the content of their interest); *Gay All. of Students v. Matthews*, 544 F.2d 162 (4th Cir. 1976).

Gender Markers, Pronouns, and Student Records: Students should be addressed using their preferred names and pronouns. Refusing to do so, or refusing to update the gender markers on a student’s records when provided with appropriate documentation, may be considered a form of sex-based discrimination under federal law. *See Grimm v. Gloucester County Sch. Bd.*, Civil No. 4:15-cv-52, 2019 U.S. Dist. Lexis 138246 (E.D. Va. Aug. 9, 2019). Likewise, a student’s right to privacy includes a student’s sexual orientation or gender identity. It is against the law for school officials to disclose or compel students to disclose this information, even if the student appears open about their sexual orientation or gender identity. *See C.N. v. Wolf*, 410 F. Supp. 2d 894, 903 (C.D. Cal. 2005).



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DISCIPLINE AND ARRESTS

Generally: School discipline policies and practices should be fair and equitable and should prioritize prevention and intervention rather than harsh punishments like suspension, expulsion, and referral to law enforcement. The goal of discipline should be to teach appropriate behaviors and minimize the time students spend out of class. In Spring 2015, the Center for Public Integrity released a study finding that Virginia led the country in schools referring students to law enforcement, a phenomenon known as the “school-to-prison pipeline.” Additional studies conducted by the Virginia Department of Education found that African American students and students with disabilities were disproportionately represented in both suspensions and referrals to law enforcement throughout Virginia schools. These disparities open up school districts to potential legal challenges for race and disability discrimination under federal civil rights laws. *See, e.g.*, Complaint against Richmond Public Schools, available at <https://acluva.org/en/cases/equal-treatment-richmond-public-school-students>. In order to avoid potential legal problems, and to provide a more equitable school environment, school officials should reevaluate and revise their current discipline policies and practices to create a more positive and preventative approach to student conduct. The Virginia Board of Education has provided a blueprint for schools to use in revising their outdated practices – the Model Guidance for Positive, Preventative Code of Student Conduct Policy and Alternatives to Suspension, available at http://www.doe.virginia.gov/support/student_conduct/index.shtml.

Due Process: The U.S. Constitution requires that students receive due process before disciplinary measures are imposed. This means that school officials must follow certain procedures before they can suspend or expel students from school. Students are generally entitled to receive notice prior to any suspension or expulsion. The notice must include the facts concerning the suspension or expulsion, and the basis for any accusations. The notice must also provide students an opportunity to explain their side. *See, e.g., Goss v. Lopez*, 419 U.S. 565 (1975). For Virginia’s specific procedural requirements, see Va. Code § 22.1-276.01 *et seq.*

Corporal Punishment: Corporal or physical punishment of students is strictly prohibited by Virginia law. *See* Va. Code § 22.1-279.1.

School Resource Officers: School Resource Officers (“SROs”) can protect students from outside danger, but often punish minor behaviors through ticketing and arrests. Law enforcement intervention should typically be a last resort for minor violations best handled by schools as discipline issues. For additional resources on how to limit disproportionate school-based arrests or referrals to law enforcement, visit the Model Guidance for Positive, Preventative Code of Student Conduct Policy and Alternatives to Suspension, available at http://www.doe.virginia.gov/support/student_conduct/index.shtml.



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RIGHTS OF PREGNANT STUDENTS

Schools are prohibited from excluding pregnant students and students with children under Title IX of the Education Amendments of 1972. This means that schools must also ensure that pregnant students or students with children have access to educational instruction, school activities, and reasonable accommodations, to the same extent that students with temporary medical conditions are given access, including the ability to make up missed classwork and learn in a safe, nonjudgmental environment. Schools are also not allowed to punish students who choose to terminate a pregnancy or to reveal a student's private medical information.



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Dr. Kim Evans
Emporia
105 Ruffin Street
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RE: Students' Rights Reminder for the 2019-2020 Academic Year

Dear Superintendent,

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Gender Markers, Pronouns, and Student Records: Students should be addressed using their preferred names and pronouns. Refusing to do so, or refusing to update the gender markers on a student’s records when provided with appropriate documentation, may be considered a form of sex-based discrimination under federal law. *See Grimm v. Gloucester County Sch. Bd.*, Civil No. 4:15-cv-52, 2019 U.S. Dist. Lexis 138246 (E.D. Va. Aug. 9, 2019). Likewise, a student’s right to privacy includes a student’s sexual orientation or gender identity. It is against the law for school officials to disclose or compel students to disclose this information, even if the student appears open about their sexual orientation or gender identity. *See C.N. v. Wolf*, 410 F. Supp. 2d 894, 903 (C.D. Cal. 2005).



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DISCIPLINE AND ARRESTS

Generally: School discipline policies and practices should be fair and equitable and should prioritize prevention and intervention rather than harsh punishments like suspension, expulsion, and referral to law enforcement. The goal of discipline should be to teach appropriate behaviors and minimize the time students spend out of class. In Spring 2015, the Center for Public Integrity released a study finding that Virginia led the country in schools referring students to law enforcement, a phenomenon known as the “school-to-prison pipeline.” Additional studies conducted by the Virginia Department of Education found that African American students and students with disabilities were disproportionately represented in both suspensions and referrals to law enforcement throughout Virginia schools. These disparities open up school districts to potential legal challenges for race and disability discrimination under federal civil rights laws. *See, e.g.*, Complaint against Richmond Public Schools, available at <https://acluva.org/en/cases/equal-treatment-richmond-public-school-students>. In order to avoid potential legal problems, and to provide a more equitable school environment, school officials should reevaluate and revise their current discipline policies and practices to create a more positive and preventative approach to student conduct. The Virginia Board of Education has provided a blueprint for schools to use in revising their outdated practices – the Model Guidance for Positive, Preventative Code of Student Conduct Policy and Alternatives to Suspension, available at http://www.doe.virginia.gov/support/student_conduct/index.shtml.

Due Process: The U.S. Constitution requires that students receive due process before disciplinary measures are imposed. This means that school officials must follow certain procedures before they can suspend or expel students from school. Students are generally entitled to receive notice prior to any suspension or expulsion. The notice must include the facts concerning the suspension or expulsion, and the basis for any accusations. The notice must also provide students an opportunity to explain their side. *See, e.g., Goss v. Lopez*, 419 U.S. 565 (1975). For Virginia’s specific procedural requirements, see Va. Code § 22.1-276.01 *et seq.*

Corporal Punishment: Corporal or physical punishment of students is strictly prohibited by Virginia law. *See* Va. Code § 22.1-279.1.

School Resource Officers: School Resource Officers (“SROs”) can protect students from outside danger, but often punish minor behaviors through ticketing and arrests. Law enforcement intervention should typically be a last resort for minor violations best handled by schools as discipline issues. For additional resources on how to limit disproportionate school-based arrests or referrals to law enforcement, visit the Model Guidance for Positive, Preventative Code of Student Conduct Policy and Alternatives to Suspension, available at http://www.doe.virginia.gov/support/student_conduct/index.shtml.



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RIGHTS OF STUDENTS WITH DISABILITIES

Students with disabilities are provided legal protections under several federal laws. The Individuals with Disabilities Education Act (“IDEA”) requires that public schools provide eligible students with disabilities a “free, appropriate public education” in the least restrictive environment. *See* 20 U.S.C. § 1400 *et seq.* As part of the IDEA, schools must affirmatively locate, identify, and evaluate children in their district for special education and related services, a process known as “child find.” Parents may also request an evaluation at any time in writing or by speaking to a teacher or administrator, and the school district must respond to the parent’s request. Schools must educate students with disabilities in the least restrictive setting possible, with an emphasis on inclusion and integration in the regular education classroom where feasible. Additionally, students receiving special education services under the IDEA, as well as students suspected of being eligible to receive services, are entitled to certain protections and safeguards in the school discipline process. *See* 34 C.F.R. § 300.530 *et seq.*

Students with disabilities are also provided with protections under Section 504 of the Rehabilitation Act of 1974 (“Section 504”) and Title II of the Americans with Disabilities Act (“ADA”). Section 504 and the ADA prohibit discrimination against students with disabilities. This means that schools are prohibited by federal law from denying students with disabilities equal access to academic courses, field trips, extracurricular activities, school technology, and health services. School officials also have a duty to ensure that students with disabilities are not being discriminated against by being denied necessary accommodations. Restricting access to educational activities and opportunities, ignoring harassment and bullying, and failing to train staff on compliance with these laws is also prohibited under Section 504 and the ADA. *See also* Va. Code § 22.1-213 *et seq.*

RIGHTS OF IMMIGRANT STUDENTS

Schools cannot discriminate against students on the basis of race, color, or national origin. This includes discriminating against students on the basis of their immigration status. Undocumented students have a right to a free public education in your school district regardless of their immigration status, and schools cannot deny students of this right. *See, e.g., Plyler v. Doe*, 457 U.S. 202 (1982). Likewise, schools are not permitted to deny enrollment to a student based on their undocumented status; treat a student differently to determine residency; make inquiries of students or parents that may expose their undocumented status; require social security numbers from parents or students for purposes of enrollment; or engage in any other practices which may chill the right of access to school. Schools cannot turn away students with limited English proficiency; they must be provided with language instruction. *See, e.g., Lau v. Nichols*, 414 U.S. 563 (1974).

School officials should not allow immigration enforcement actions on school grounds without a judicial warrant based on probable cause that a criminal violation of the immigration laws has occurred. Schools should not call immigration authorities on students or consent to any immigration enforcement on school grounds without a criminal warrant. There is no state law requiring any state or local official to contact immigration officials nor any state or federal law prohibiting adoption of a policy that protects students and teachers from immigration action in the absence of a judicial criminal warrant.

RIGHTS OF PREGNANT STUDENTS

Schools are prohibited from excluding pregnant students and students with children under Title IX of the Education Amendments of 1972. This means that schools must also ensure that pregnant students or students with children have access to educational instruction, school activities, and reasonable accommodations, to the same extent that students with temporary medical conditions are given access, including the ability to make up missed classwork and learn in a safe, nonjudgmental environment. Schools are also not allowed to punish students who choose to terminate a pregnancy or to reveal a student's private medical information.



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Dr. Harry Thomas III
Essex County
P.O. Box 756
Tappahannock, VA 22560

RE: Students' Rights Reminder for the 2019-2020 Academic Year

Dear Superintendent,

As our communities prepare for the new academic year and students head back to school, it is important to be aware of the key issues affecting Virginia's students and their rights. Being aware of students' rights under state and federal law can help school officials avoid any potential legal complications and contribute to a positive learning environment that will allow each student to thrive.



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Federal and state laws afford children enrolled in school protection from discrimination and harassment based on race, color, religion, sex, national origin, or disability. Schools are responsible for ensuring these rights are protected and for promoting a safe school atmosphere. Additionally, schools are responsible for ensuring that students' right to free speech is respected and that the freedom to practice their religion—or no religion at all— is upheld.

Summarized below you will find information regarding: student speech rights; the Pledge of Allegiance; censorship; religious beliefs and accommodations; the rights of students who identify as LGBTQ; discipline and arrests; the rights of students with disabilities; the rights of students who are immigrants; and the rights of students who are pregnant.

We hope this information will help your school district understand the rights of students in schools and guide you in taking actions that ensure student rights are protected in a safe and supportive environment. Please do not hesitate to contact the ACLU of Virginia if you have any questions about these issues or if we can be of any assistance to you in evaluating and formulating school policy on any of these matters. We can be reached at (804) 644-8022 or acluva@acluva.org.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Claire G. Gastañaga". The signature is fluid and cursive.

Claire G. Gastañaga
Executive Director



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STUDENT SPEECH RIGHTS

The First Amendment ensures that students cannot be punished for exercising free speech rights, even if administrators do not approve of their message. In the landmark Supreme Court case *Tinker v. Des Moines Independent Community School District*, the ACLU successfully challenged a school district's decision to suspend three students for wearing armbands in protest of the Vietnam War. 393 U.S. 503 (1969). The court declared that students and teachers do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." *Id.* at 506. Over the years, the ACLU has also successfully defended the right of students to wear an anti-abortion armband, a pro-LGBTQ t-shirt, and shirts critical of political figures. Schools may not discipline students for expressing an idea or political viewpoint in class or during school activities, as long as it does not cause a substantial disruption to the school environment.

It is true that the constitutional rights of students in public school are not the same as those of adults exercising First Amendment rights on public streets. Students' speech rights may be limited by reasonable time, place, and manner restrictions because of the unique characteristics of the school environment. A school may limit student speech, for example, through reasonable school-wide policies against cyberbullying. Additionally, schools may prohibit vulgar or offensive speech that is inconsistent with the "fundamental values of public school education." *Bethel Sch. Dist. No. 43 v. Fraser*, 478 U.S. 675, 685-86 (1986).

School officials should take care, however, not to define peaceful assembly as behavior that causes a substantial disruption to school activities. If students engage in a walkout, school officials may choose to discipline students for missing class but may not engage in harsher punishment because of the message or political nature of the action. School officials must not draw distinctions based on the content of a student's speech or expressive activity in imposing discipline.

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Schools cannot punish students for refusing to salute the flag or say the Pledge of Allegiance. *W.Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624 (1943); *Sherman v. Comm. Consol. Sch. Dist. 21*, 980 F.2d 437 (7th Cir. 1992). School officials also cannot force students to stand during the Pledge of Allegiance or leave the room if a student refuses to recite the Pledge. *See* Va. Code § 22.1-202(C) ("[N]o student shall be compelled to recite the Pledge if he, his parent or legal guardian objects on religious, philosophical or other grounds to his participating in this exercise.")

CENSORSHIP

Books: Banning books, removing books and materials from a classroom or library, or otherwise making it difficult for students to read a broad array of literature limits intellectual freedom. Making books and ideas unavailable based on their content or viewpoint or taking books out of schools because they are controversial, unpopular, or offensive, may violate the First Amendment. *See, e.g., Bd. of Educ. v. Pico*, 457 U.S. 853 (1982). Courts view school libraries as the main place where students exercise their freedom "to inquire, to study and to evaluate, to gain new maturity and understanding." *Id.* at 868.

Student Publications: Schools may review and control the content of school sponsored student publications including student newspapers, yearbooks, literary magazines, on-campus videos, and radio broadcasts. But schools cannot control student publications that are not sponsored or funded by the school, not done as part of a class or school project, or that are done on a student’s own time with their own resources. *See, e.g., Burt v. Barker*, 861 F.2d 1149 (9th Cir. 1988); *Fujishima v. Bd. of Ed.*, 160 F.2d 1355 (7th Cir. 1972); *Eisner v. Stanford Bd. of Ed.*, 440 F.2d 803 (2d Cir. 1971).

RELIGIOUS BELIEFS AND ACCOMMODATIONS

Free Exercise Clause: Under the First Amendment’s Free Exercise Clause, students have the right to worship as they see fit, with only limited restrictions. This means that while at school, students are free to practice their religion or nonreligion and to express themselves religiously without interference by school officials. Students may, for example, wear religious attire or clothing with religious messaging to school; post religious messages or images on their lockers; or bring religious materials, including religious texts or objects, to school. School officials may not, for instance, require students to remove their hijab, yarmulke, or other head covering, as it substantially burdens the practice of the student’s religion. *See, e.g., Va. Code § 22.1-203.1 et seq.; VIRGINIA STATE BOARD OF EDUCATION, GUIDELINES CONCERNING RELIGIOUS ACTIVITY IN THE PUBLIC SCHOOLS* (1995).

Establishment Clause: Under the First Amendment’s Establishment Clause, school officials cannot favor one religion over another or favor religion over nonbelief. In practice, this means that school officials and teachers cannot conduct prayer or bible-reading sessions, organize or participate in student-led prayer, or hold a prayer at graduation or sporting events, even when participation is voluntary. *See, e.g., Abington Sch. Dist. v. Schempp*, 374 U.S. 203 (1963); *Engel v. Vitale*, 370 U.S. 421 (1962); *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 308 (2000); *Lee v. Weisman*, 505 U.S. 577 (1992). Teachers cannot lead students in devotional activities or encourage student participation in religious activity before or after school, during class, or at school-sponsored activities. In fact, in the public-school context, the Supreme Court has invalidated almost every instance of school- or teacher-sponsored religious expression. Under Virginia law, school boards are permitted to establish a daily observance of one minute of silence, but the school board must be careful to ensure that its policy has secular justifications and is not merely a pretense to encourage prayer. *See, e.g., Va. Code § 22.1-203; VIRGINIA STATE BOARD OF EDUCATION, GUIDELINES CONCERNING RELIGIOUS ACTIVITY IN THE PUBLIC SCHOOLS* (1995).

RIGHTS OF LGBTQ STUDENTS

Cultivating a Safe Environment: Bullying of lesbian, gay, bisexual, transgender, and queer (“LGBTQ”) students has been documented as pervasive at many schools and is all too often ignored, or even encouraged, by school officials. LGBTQ students have a right to live their authentic lives and express themselves at school. Students have a right to be out of the closet at school, and conversely, public schools are not allowed to “out” students publicly. School officials and administrators must ensure they are creating a safe learning environment and protecting LGBTQ students from bullying and harassment. *See, e.g., Title IX, 20 U.S.C. § 1681* (schools may be liable if they act with deliberate indifference in failing to protect students from severe harassment on the basis of sex).



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Restrooms & Locker Rooms: Transgender students must be allowed to use the restroom facilities consistent with their gender identity. Schools cannot create policies that require transgender students to use restrooms or locker rooms that do not correspond with their gender identity, and schools may not create policies that require transgender students to use single-user facilities. *See Grimm v. Gloucester County Sch. Bd.*, Civil No. 4:15-cv-52, 2019 U.S. Dist. Lexis 138246 (E.D. Va. Aug. 9, 2019).

Dress Code: School officials cannot force students to wear clothing inconsistent with their gender identity. Public schools may have dress codes, but dress codes cannot treat students differently based on their gender, force students to conform to sex stereotypes, or censor particular viewpoints. Schools cannot enact dress codes based on the stereotype that only girls can wear some types of clothes and only boys wear other types of clothes. *See, e.g., U.S. v. Virginia*, 518 U.S. 515, 533 (1996) (government actors must not treat male and female students differently because of “overbroad generalizations about the different talents, capacities, or preferences of males and females.”). Schools may, for example, require that skirts be a certain length; however, they cannot require that some students wear skirts and prohibit others from doing so based on the student’s sex or gender expression. This also applies to pants, ties, or other clothing associated with traditional gender roles. And it applies to attire requirements for homecoming, prom, graduation, and other special school events.

Discipline: The intimate relationships of LGBTQ students must be treated with equal dignity as those of heterosexual students. Policies that prohibit same-sex couples or dates from attending prom, homecoming, or other dance functions violates students’ rights under Title IX of the Education Amendments of 1972, the Equal Protection Clause of the U.S. Constitution, and the Bill of Rights of the Virginia Constitution. LGBTQ students should not be punished more severely than heterosexual students for similar behavior, including for displays of affection.

LGBTQ Student Organizations: Students interested in forming a student organization, typically called a gay-straight alliance (“GSA”), are to be treated the same as students forming any other noncurricular organization or club. *See, e.g., 20 U.S.C. § 4071(a)* (if a school allows any noncurricular student group to meet, it cannot deny other groups the same access based on the content of their interest); *Gay All. of Students v. Matthews*, 544 F.2d 162 (4th Cir. 1976).

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DISCIPLINE AND ARRESTS

Generally: School discipline policies and practices should be fair and equitable and should prioritize prevention and intervention rather than harsh punishments like suspension, expulsion, and referral to law enforcement. The goal of discipline should be to teach appropriate behaviors and minimize the time students spend out of class. In Spring 2015, the Center for Public Integrity released a study finding that Virginia led the country in schools referring students to law enforcement, a phenomenon known as the “school-to-prison pipeline.” Additional studies conducted by the Virginia Department of Education found that African American students and students with disabilities were disproportionately represented in both suspensions and referrals to law enforcement throughout Virginia schools. These disparities open up school districts to potential legal challenges for race and disability discrimination under federal civil rights laws. *See, e.g.*, Complaint against Richmond Public Schools, available at <https://acluva.org/en/cases/equal-treatment-richmond-public-school-students>. In order to avoid potential legal problems, and to provide a more equitable school environment, school officials should reevaluate and revise their current discipline policies and practices to create a more positive and preventative approach to student conduct. The Virginia Board of Education has provided a blueprint for schools to use in revising their outdated practices – the Model Guidance for Positive, Preventative Code of Student Conduct Policy and Alternatives to Suspension, available at http://www.doe.virginia.gov/support/student_conduct/index.shtml.

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RIGHTS OF STUDENTS WITH DISABILITIES

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RIGHTS OF IMMIGRANT STUDENTS

Schools cannot discriminate against students on the basis of race, color, or national origin. This includes discriminating against students on the basis of their immigration status. Undocumented students have a right to a free public education in your school district regardless of their immigration status, and schools cannot deny students of this right. *See, e.g., Plyler v. Doe*, 457 U.S. 202 (1982). Likewise, schools are not permitted to deny enrollment to a student based on their undocumented status; treat a student differently to determine residency; make inquiries of students or parents that may expose their undocumented status; require social security numbers from parents or students for purposes of enrollment; or engage in any other practices which may chill the right of access to school. Schools cannot turn away students with limited English proficiency; they must be provided with language instruction. *See, e.g., Lau v. Nichols*, 414 U.S. 563 (1974).

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RIGHTS OF PREGNANT STUDENTS

Schools are prohibited from excluding pregnant students and students with children under Title IX of the Education Amendments of 1972. This means that schools must also ensure that pregnant students or students with children have access to educational instruction, school activities, and reasonable accommodations, to the same extent that students with temporary medical conditions are given access, including the ability to make up missed classwork and learn in a safe, nonjudgmental environment. Schools are also not allowed to punish students who choose to terminate a pregnancy or to reveal a student's private medical information.



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Dr. Phyllis Pajardo
Fairfax
10455 Armstrong St.
Fairfax, VA 22030

RE: Students' Rights Reminder for the 2019-2020 Academic Year

Dear Superintendent,

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Summarized below you will find information regarding: student speech rights; the Pledge of Allegiance; censorship; religious beliefs and accommodations; the rights of students who identify as LGBTQ; discipline and arrests; the rights of students with disabilities; the rights of students who are immigrants; and the rights of students who are pregnant.

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Claire G. Gastañaga
Executive Director



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Establishment Clause: Under the First Amendment’s Establishment Clause, school officials cannot favor one religion over another or favor religion over nonbelief. In practice, this means that school officials and teachers cannot conduct prayer or bible-reading sessions, organize or participate in student-led prayer, or hold a prayer at graduation or sporting events, even when participation is voluntary. *See, e.g., Abington Sch. Dist. v. Schempp*, 374 U.S. 203 (1963); *Engel v. Vitale*, 370 U.S. 421 (1962); *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 308 (2000); *Lee v. Weisman*, 505 U.S. 577 (1992). Teachers cannot lead students in devotional activities or encourage student participation in religious activity before or after school, during class, or at school-sponsored activities. In fact, in the public-school context, the Supreme Court has invalidated almost every instance of school- or teacher-sponsored religious expression. Under Virginia law, school boards are permitted to establish a daily observance of one minute of silence, but the school board must be careful to ensure that its policy has secular justifications and is not merely a pretense to encourage prayer. *See, e.g., Va. Code § 22.1-203; VIRGINIA STATE BOARD OF EDUCATION, GUIDELINES CONCERNING RELIGIOUS ACTIVITY IN THE PUBLIC SCHOOLS* (1995).

RIGHTS OF LGBTQ STUDENTS

Cultivating a Safe Environment: Bullying of lesbian, gay, bisexual, transgender, and queer (“LGBTQ”) students has been documented as pervasive at many schools and is all too often ignored, or even encouraged, by school officials. LGBTQ students have a right to live their authentic lives and express themselves at school. Students have a right to be out of the closet at school, and conversely, public schools are not allowed to “out” students publicly. School officials and administrators must ensure they are creating a safe learning environment and protecting LGBTQ students from bullying and harassment. *See, e.g., Title IX, 20 U.S.C. § 1681* (schools may be liable if they act with deliberate indifference in failing to protect students from severe harassment on the basis of sex).



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Due Process: The U.S. Constitution requires that students receive due process before disciplinary measures are imposed. This means that school officials must follow certain procedures before they can suspend or expel students from school. Students are generally entitled to receive notice prior to any suspension or expulsion. The notice must include the facts concerning the suspension or expulsion, and the basis for any accusations. The notice must also provide students an opportunity to explain their side. *See, e.g., Goss v. Lopez*, 419 U.S. 565 (1975). For Virginia’s specific procedural requirements, see Va. Code § 22.1-276.01 *et seq.*

Corporal Punishment: Corporal or physical punishment of students is strictly prohibited by Virginia law. *See* Va. Code § 22.1-279.1.

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Students with disabilities are also provided with protections under Section 504 of the Rehabilitation Act of 1974 (“Section 504”) and Title II of the Americans with Disabilities Act (“ADA”). Section 504 and the ADA prohibit discrimination against students with disabilities. This means that schools are prohibited by federal law from denying students with disabilities equal access to academic courses, field trips, extracurricular activities, school technology, and health services. School officials also have a duty to ensure that students with disabilities are not being discriminated against by being denied necessary accommodations. Restricting access to educational activities and opportunities, ignoring harassment and bullying, and failing to train staff on compliance with these laws is also prohibited under Section 504 and the ADA. *See also* Va. Code § 22.1-213 *et seq.*

RIGHTS OF IMMIGRANT STUDENTS

Schools cannot discriminate against students on the basis of race, color, or national origin. This includes discriminating against students on the basis of their immigration status. Undocumented students have a right to a free public education in your school district regardless of their immigration status, and schools cannot deny students of this right. *See, e.g., Plyler v. Doe*, 457 U.S. 202 (1982). Likewise, schools are not permitted to deny enrollment to a student based on their undocumented status; treat a student differently to determine residency; make inquiries of students or parents that may expose their undocumented status; require social security numbers from parents or students for purposes of enrollment; or engage in any other practices which may chill the right of access to school. Schools cannot turn away students with limited English proficiency; they must be provided with language instruction. *See, e.g., Lau v. Nichols*, 414 U.S. 563 (1974).

School officials should not allow immigration enforcement actions on school grounds without a judicial warrant based on probable cause that a criminal violation of the immigration laws has occurred. Schools should not call immigration authorities on students or consent to any immigration enforcement on school grounds without a criminal warrant. There is no state law requiring any state or local official to contact immigration officials nor any state or federal law prohibiting adoption of a policy that protects students and teachers from immigration action in the absence of a judicial criminal warrant.

RIGHTS OF PREGNANT STUDENTS

Schools are prohibited from excluding pregnant students and students with children under Title IX of the Education Amendments of 1972. This means that schools must also ensure that pregnant students or students with children have access to educational instruction, school activities, and reasonable accommodations, to the same extent that students with temporary medical conditions are given access, including the ability to make up missed classwork and learn in a safe, nonjudgmental environment. Schools are also not allowed to punish students who choose to terminate a pregnancy or to reveal a student's private medical information.



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Dr. Scott S. Brabrand
Fairfax County
Gatehouse Adm Ctr
8115 Gatehouse Rd
Falls Church, VA 22042

RE: Students' Rights Reminder for the 2019-2020 Academic Year

Dear Superintendent,

As our communities prepare for the new academic year and students head back to school, it is important to be aware of the key issues affecting Virginia's students and their rights. Being aware of students' rights under state and federal law can help school officials avoid any potential legal complications and contribute to a positive learning environment that will allow each student to thrive.



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Federal and state laws afford children enrolled in school protection from discrimination and harassment based on race, color, religion, sex, national origin, or disability. Schools are responsible for ensuring these rights are protected and for promoting a safe school atmosphere. Additionally, schools are responsible for ensuring that students' right to free speech is respected and that the freedom to practice their religion—or no religion at all—is upheld.

Summarized below you will find information regarding: student speech rights; the Pledge of Allegiance; censorship; religious beliefs and accommodations; the rights of students who identify as LGBTQ; discipline and arrests; the rights of students with disabilities; the rights of students who are immigrants; and the rights of students who are pregnant.

We hope this information will help your school district understand the rights of students in schools and guide you in taking actions that ensure student rights are protected in a safe and supportive environment. Please do not hesitate to contact the ACLU of Virginia if you have any questions about these issues or if we can be of any assistance to you in evaluating and formulating school policy on any of these matters. We can be reached at (804) 644-8022 or acluva@acluva.org.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Claire G. Gastañaga". The signature is fluid and cursive.

Claire G. Gastañaga
Executive Director



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STUDENT SPEECH RIGHTS

The First Amendment ensures that students cannot be punished for exercising free speech rights, even if administrators do not approve of their message. In the landmark Supreme Court case *Tinker v. Des Moines Independent Community School District*, the ACLU successfully challenged a school district's decision to suspend three students for wearing armbands in protest of the Vietnam War. 393 U.S. 503 (1969). The court declared that students and teachers do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." *Id.* at 506. Over the years, the ACLU has also successfully defended the right of students to wear an anti-abortion armband, a pro-LGBTQ t-shirt, and shirts critical of political figures. Schools may not discipline students for expressing an idea or political viewpoint in class or during school activities, as long as it does not cause a substantial disruption to the school environment.

It is true that the constitutional rights of students in public school are not the same as those of adults exercising First Amendment rights on public streets. Students' speech rights may be limited by reasonable time, place, and manner restrictions because of the unique characteristics of the school environment. A school may limit student speech, for example, through reasonable school-wide policies against cyberbullying. Additionally, schools may prohibit vulgar or offensive speech that is inconsistent with the "fundamental values of public school education." *Bethel Sch. Dist. No. 43 v. Fraser*, 478 U.S. 675, 685-86 (1986).

School officials should take care, however, not to define peaceful assembly as behavior that causes a substantial disruption to school activities. If students engage in a walkout, school officials may choose to discipline students for missing class but may not engage in harsher punishment because of the message or political nature of the action. School officials must not draw distinctions based on the content of a student's speech or expressive activity in imposing discipline.

PLEDGE OF ALLEGIANCE

Schools cannot punish students for refusing to salute the flag or say the Pledge of Allegiance. *W.Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624 (1943); *Sherman v. Comm. Consol. Sch. Dist. 21*, 980 F.2d 437 (7th Cir. 1992). School officials also cannot force students to stand during the Pledge of Allegiance or leave the room if a student refuses to recite the Pledge. *See* Va. Code § 22.1-202(C) ("[N]o student shall be compelled to recite the Pledge if he, his parent or legal guardian objects on religious, philosophical or other grounds to his participating in this exercise.")

CENSORSHIP

Books: Banning books, removing books and materials from a classroom or library, or otherwise making it difficult for students to read a broad array of literature limits intellectual freedom. Making books and ideas unavailable based on their content or viewpoint or taking books out of schools because they are controversial, unpopular, or offensive, may violate the First Amendment. *See, e.g., Bd. of Educ. v. Pico*, 457 U.S. 853 (1982). Courts view school libraries as the main place where students exercise their freedom "to inquire, to study and to evaluate, to gain new maturity and understanding." *Id.* at 868.

Student Publications: Schools may review and control the content of school sponsored student publications including student newspapers, yearbooks, literary magazines, on-campus videos, and radio broadcasts. But schools cannot control student publications that are not sponsored or funded by the school, not done as part of a class or school project, or that are done on a student’s own time with their own resources. *See, e.g., Burt v. Barker*, 861 F.2d 1149 (9th Cir. 1988); *Fujishima v. Bd. of Ed.*, 160 F.2d 1355 (7th Cir. 1972); *Eisner v. Stanford Bd. of Ed.*, 440 F.2d 803 (2d Cir. 1971).

RELIGIOUS BELIEFS AND ACCOMMODATIONS

Free Exercise Clause: Under the First Amendment’s Free Exercise Clause, students have the right to worship as they see fit, with only limited restrictions. This means that while at school, students are free to practice their religion or nonreligion and to express themselves religiously without interference by school officials. Students may, for example, wear religious attire or clothing with religious messaging to school; post religious messages or images on their lockers; or bring religious materials, including religious texts or objects, to school. School officials may not, for instance, require students to remove their hijab, yarmulke, or other head covering, as it substantially burdens the practice of the student’s religion. *See, e.g., Va. Code § 22.1-203.1 et seq.; VIRGINIA STATE BOARD OF EDUCATION, GUIDELINES CONCERNING RELIGIOUS ACTIVITY IN THE PUBLIC SCHOOLS* (1995).

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Dr. Peter Noonan
Falls Church
800 W Broad St Suite 203
Falls Church, VA 22046

RE: Students' Rights Reminder for the 2019-2020 Academic Year

Dear Superintendent,

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We hope this information will help your school district understand the rights of students in schools and guide you in taking actions that ensure student rights are protected in a safe and supportive environment. Please do not hesitate to contact the ACLU of Virginia if you have any questions about these issues or if we can be of any assistance to you in evaluating and formulating school policy on any of these matters. We can be reached at (804) 644-8022 or acluva@acluva.org.

Very truly yours,

A handwritten signature in blue ink, which appears to read "Claire G. Gastañaga". The signature is fluid and cursive.

Claire G. Gastañaga
Executive Director



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STUDENT SPEECH RIGHTS

The First Amendment ensures that students cannot be punished for exercising free speech rights, even if administrators do not approve of their message. In the landmark Supreme Court case *Tinker v. Des Moines Independent Community School District*, the ACLU successfully challenged a school district's decision to suspend three students for wearing armbands in protest of the Vietnam War. 393 U.S. 503 (1969). The court declared that students and teachers do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." *Id.* at 506. Over the years, the ACLU has also successfully defended the right of students to wear an anti-abortion armband, a pro-LGBTQ t-shirt, and shirts critical of political figures. Schools may not discipline students for expressing an idea or political viewpoint in class or during school activities, as long as it does not cause a substantial disruption to the school environment.

It is true that the constitutional rights of students in public school are not the same as those of adults exercising First Amendment rights on public streets. Students' speech rights may be limited by reasonable time, place, and manner restrictions because of the unique characteristics of the school environment. A school may limit student speech, for example, through reasonable school-wide policies against cyberbullying. Additionally, schools may prohibit vulgar or offensive speech that is inconsistent with the "fundamental values of public school education." *Bethel Sch. Dist. No. 43 v. Fraser*, 478 U.S. 675, 685-86 (1986).

School officials should take care, however, not to define peaceful assembly as behavior that causes a substantial disruption to school activities. If students engage in a walkout, school officials may choose to discipline students for missing class but may not engage in harsher punishment because of the message or political nature of the action. School officials must not draw distinctions based on the content of a student's speech or expressive activity in imposing discipline.

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RIGHTS OF LGBTQ STUDENTS

Cultivating a Safe Environment: Bullying of lesbian, gay, bisexual, transgender, and queer (“LGBTQ”) students has been documented as pervasive at many schools and is all too often ignored, or even encouraged, by school officials. LGBTQ students have a right to live their authentic lives and express themselves at school. Students have a right to be out of the closet at school, and conversely, public schools are not allowed to “out” students publicly. School officials and administrators must ensure they are creating a safe learning environment and protecting LGBTQ students from bullying and harassment. *See, e.g., Title IX, 20 U.S.C. § 1681* (schools may be liable if they act with deliberate indifference in failing to protect students from severe harassment on the basis of sex).



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Discipline: The intimate relationships of LGBTQ students must be treated with equal dignity as those of heterosexual students. Policies that prohibit same-sex couples or dates from attending prom, homecoming, or other dance functions violates students’ rights under Title IX of the Education Amendments of 1972, the Equal Protection Clause of the U.S. Constitution, and the Bill of Rights of the Virginia Constitution. LGBTQ students should not be punished more severely than heterosexual students for similar behavior, including for displays of affection.

LGBTQ Student Organizations: Students interested in forming a student organization, typically called a gay-straight alliance (“GSA”), are to be treated the same as students forming any other noncurricular organization or club. *See, e.g., 20 U.S.C. § 4071(a)* (if a school allows any noncurricular student group to meet, it cannot deny other groups the same access based on the content of their interest); *Gay All. of Students v. Matthews*, 544 F.2d 162 (4th Cir. 1976).

Gender Markers, Pronouns, and Student Records: Students should be addressed using their preferred names and pronouns. Refusing to do so, or refusing to update the gender markers on a student’s records when provided with appropriate documentation, may be considered a form of sex-based discrimination under federal law. *See Grimm v. Gloucester County Sch. Bd.*, Civil No. 4:15-cv-52, 2019 U.S. Dist. Lexis 138246 (E.D. Va. Aug. 9, 2019). Likewise, a student’s right to privacy includes a student’s sexual orientation or gender identity. It is against the law for school officials to disclose or compel students to disclose this information, even if the student appears open about their sexual orientation or gender identity. *See C.N. v. Wolf*, 410 F. Supp. 2d 894, 903 (C.D. Cal. 2005).



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DISCIPLINE AND ARRESTS

Generally: School discipline policies and practices should be fair and equitable and should prioritize prevention and intervention rather than harsh punishments like suspension, expulsion, and referral to law enforcement. The goal of discipline should be to teach appropriate behaviors and minimize the time students spend out of class. In Spring 2015, the Center for Public Integrity released a study finding that Virginia led the country in schools referring students to law enforcement, a phenomenon known as the “school-to-prison pipeline.” Additional studies conducted by the Virginia Department of Education found that African American students and students with disabilities were disproportionately represented in both suspensions and referrals to law enforcement throughout Virginia schools. These disparities open up school districts to potential legal challenges for race and disability discrimination under federal civil rights laws. *See, e.g.*, Complaint against Richmond Public Schools, available at <https://acluva.org/en/cases/equal-treatment-richmond-public-school-students>. In order to avoid potential legal problems, and to provide a more equitable school environment, school officials should reevaluate and revise their current discipline policies and practices to create a more positive and preventative approach to student conduct. The Virginia Board of Education has provided a blueprint for schools to use in revising their outdated practices – the Model Guidance for Positive, Preventative Code of Student Conduct Policy and Alternatives to Suspension, available at http://www.doe.virginia.gov/support/student_conduct/index.shtml.

Due Process: The U.S. Constitution requires that students receive due process before disciplinary measures are imposed. This means that school officials must follow certain procedures before they can suspend or expel students from school. Students are generally entitled to receive notice prior to any suspension or expulsion. The notice must include the facts concerning the suspension or expulsion, and the basis for any accusations. The notice must also provide students an opportunity to explain their side. *See, e.g., Goss v. Lopez*, 419 U.S. 565 (1975). For Virginia’s specific procedural requirements, see Va. Code § 22.1-276.01 *et seq.*

Corporal Punishment: Corporal or physical punishment of students is strictly prohibited by Virginia law. *See* Va. Code § 22.1-279.1.

School Resource Officers: School Resource Officers (“SROs”) can protect students from outside danger, but often punish minor behaviors through ticketing and arrests. Law enforcement intervention should typically be a last resort for minor violations best handled by schools as discipline issues. For additional resources on how to limit disproportionate school-based arrests or referrals to law enforcement, visit the Model Guidance for Positive, Preventative Code of Student Conduct Policy and Alternatives to Suspension, available at http://www.doe.virginia.gov/support/student_conduct/index.shtml.



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Students with disabilities are provided legal protections under several federal laws. The Individuals with Disabilities Education Act (“IDEA”) requires that public schools provide eligible students with disabilities a “free, appropriate public education” in the least restrictive environment. *See* 20 U.S.C. § 1400 *et seq.* As part of the IDEA, schools must affirmatively locate, identify, and evaluate children in their district for special education and related services, a process known as “child find.” Parents may also request an evaluation at any time in writing or by speaking to a teacher or administrator, and the school district must respond to the parent’s request. Schools must educate students with disabilities in the least restrictive setting possible, with an emphasis on inclusion and integration in the regular education classroom where feasible. Additionally, students receiving special education services under the IDEA, as well as students suspected of being eligible to receive services, are entitled to certain protections and safeguards in the school discipline process. *See* 34 C.F.R. § 300.530 *et seq.*

Students with disabilities are also provided with protections under Section 504 of the Rehabilitation Act of 1974 (“Section 504”) and Title II of the Americans with Disabilities Act (“ADA”). Section 504 and the ADA prohibit discrimination against students with disabilities. This means that schools are prohibited by federal law from denying students with disabilities equal access to academic courses, field trips, extracurricular activities, school technology, and health services. School officials also have a duty to ensure that students with disabilities are not being discriminated against by being denied necessary accommodations. Restricting access to educational activities and opportunities, ignoring harassment and bullying, and failing to train staff on compliance with these laws is also prohibited under Section 504 and the ADA. *See also* Va. Code § 22.1-213 *et seq.*

RIGHTS OF IMMIGRANT STUDENTS

Schools cannot discriminate against students on the basis of race, color, or national origin. This includes discriminating against students on the basis of their immigration status. Undocumented students have a right to a free public education in your school district regardless of their immigration status, and schools cannot deny students of this right. *See, e.g., Plyler v. Doe*, 457 U.S. 202 (1982). Likewise, schools are not permitted to deny enrollment to a student based on their undocumented status; treat a student differently to determine residency; make inquiries of students or parents that may expose their undocumented status; require social security numbers from parents or students for purposes of enrollment; or engage in any other practices which may chill the right of access to school. Schools cannot turn away students with limited English proficiency; they must be provided with language instruction. *See, e.g., Lau v. Nichols*, 414 U.S. 563 (1974).

School officials should not allow immigration enforcement actions on school grounds without a judicial warrant based on probable cause that a criminal violation of the immigration laws has occurred. Schools should not call immigration authorities on students or consent to any immigration enforcement on school grounds without a criminal warrant. There is no state law requiring any state or local official to contact immigration officials nor any state or federal law prohibiting adoption of a policy that protects students and teachers from immigration action in the absence of a judicial criminal warrant.

RIGHTS OF PREGNANT STUDENTS

Schools are prohibited from excluding pregnant students and students with children under Title IX of the Education Amendments of 1972. This means that schools must also ensure that pregnant students or students with children have access to educational instruction, school activities, and reasonable accommodations, to the same extent that students with temporary medical conditions are given access, including the ability to make up missed classwork and learn in a safe, nonjudgmental environment. Schools are also not allowed to punish students who choose to terminate a pregnancy or to reveal a student's private medical information.



AMERICAN CIVIL LIBERTIES UNION
FOUNDATION

Virginia

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Dr. David Jeck
Fauquier County
320 Hospital Drive
Suite 40
Warrenton, VA 20186

RE: Students' Rights Reminder for the 2019-2020 Academic Year

Dear Superintendent,

As our communities prepare for the new academic year and students head back to school, it is important to be aware of the key issues affecting Virginia's students and their rights. Being aware of students' rights under state and federal law can help school officials avoid any potential legal complications and contribute to a positive learning environment that will allow each student to thrive.



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Federal and state laws afford children enrolled in school protection from discrimination and harassment based on race, color, religion, sex, national origin, or disability. Schools are responsible for ensuring these rights are protected and for promoting a safe school atmosphere. Additionally, schools are responsible for ensuring that students' right to free speech is respected and that the freedom to practice their religion—or no religion at all—is upheld.

Summarized below you will find information regarding: student speech rights; the Pledge of Allegiance; censorship; religious beliefs and accommodations; the rights of students who identify as LGBTQ; discipline and arrests; the rights of students with disabilities; the rights of students who are immigrants; and the rights of students who are pregnant.

We hope this information will help your school district understand the rights of students in schools and guide you in taking actions that ensure student rights are protected in a safe and supportive environment. Please do not hesitate to contact the ACLU of Virginia if you have any questions about these issues or if we can be of any assistance to you in evaluating and formulating school policy on any of these matters. We can be reached at (804) 644-8022 or acluva@acluva.org.

Very truly yours,

A handwritten signature in blue ink, which appears to read "Claire G. Gastañaga". The signature is fluid and cursive.

Claire G. Gastañaga
Executive Director



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Schools cannot discriminate against students on the basis of race, color, or national origin. This includes discriminating against students on the basis of their immigration status. Undocumented students have a right to a free public education in your school district regardless of their immigration status, and schools cannot deny students of this right. *See, e.g., Plyler v. Doe*, 457 U.S. 202 (1982). Likewise, schools are not permitted to deny enrollment to a student based on their undocumented status; treat a student differently to determine residency; make inquiries of students or parents that may expose their undocumented status; require social security numbers from parents or students for purposes of enrollment; or engage in any other practices which may chill the right of access to school. Schools cannot turn away students with limited English proficiency; they must be provided with language instruction. *See, e.g., Lau v. Nichols*, 414 U.S. 563 (1974).

School officials should not allow immigration enforcement actions on school grounds without a judicial warrant based on probable cause that a criminal violation of the immigration laws has occurred. Schools should not call immigration authorities on students or consent to any immigration enforcement on school grounds without a criminal warrant. There is no state law requiring any state or local official to contact immigration officials nor any state or federal law prohibiting adoption of a policy that protects students and teachers from immigration action in the absence of a judicial criminal warrant.

RIGHTS OF PREGNANT STUDENTS

Schools are prohibited from excluding pregnant students and students with children under Title IX of the Education Amendments of 1972. This means that schools must also ensure that pregnant students or students with children have access to educational instruction, school activities, and reasonable accommodations, to the same extent that students with temporary medical conditions are given access, including the ability to make up missed classwork and learn in a safe, nonjudgmental environment. Schools are also not allowed to punish students who choose to terminate a pregnancy or to reveal a student's private medical information.



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Dr. John Wheeler
Floyd County
140 Harris Hart Rd NE
Floyd, VA 24091

RE: Students' Rights Reminder for the 2019-2020 Academic Year

Dear Superintendent,

As our communities prepare for the new academic year and students head back to school, it is important to be aware of the key issues affecting Virginia's students and their rights. Being aware of students' rights under state and federal law can help school officials avoid any potential legal complications and contribute to a positive learning environment that will allow each student to thrive.



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Federal and state laws afford children enrolled in school protection from discrimination and harassment based on race, color, religion, sex, national origin, or disability. Schools are responsible for ensuring these rights are protected and for promoting a safe school atmosphere. Additionally, schools are responsible for ensuring that students' right to free speech is respected and that the freedom to practice their religion—or no religion at all— is upheld.

Summarized below you will find information regarding: student speech rights; the Pledge of Allegiance; censorship; religious beliefs and accommodations; the rights of students who identify as LGBTQ; discipline and arrests; the rights of students with disabilities; the rights of students who are immigrants; and the rights of students who are pregnant.

We hope this information will help your school district understand the rights of students in schools and guide you in taking actions that ensure student rights are protected in a safe and supportive environment. Please do not hesitate to contact the ACLU of Virginia if you have any questions about these issues or if we can be of any assistance to you in evaluating and formulating school policy on any of these matters. We can be reached at (804) 644-8022 or acluva@acluva.org.

Very truly yours,

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Claire G. Gastañaga
Executive Director



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STUDENT SPEECH RIGHTS

The First Amendment ensures that students cannot be punished for exercising free speech rights, even if administrators do not approve of their message. In the landmark Supreme Court case *Tinker v. Des Moines Independent Community School District*, the ACLU successfully challenged a school district's decision to suspend three students for wearing armbands in protest of the Vietnam War. 393 U.S. 503 (1969). The court declared that students and teachers do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." *Id.* at 506. Over the years, the ACLU has also successfully defended the right of students to wear an anti-abortion armband, a pro-LGBTQ t-shirt, and shirts critical of political figures. Schools may not discipline students for expressing an idea or political viewpoint in class or during school activities, as long as it does not cause a substantial disruption to the school environment.

It is true that the constitutional rights of students in public school are not the same as those of adults exercising First Amendment rights on public streets. Students' speech rights may be limited by reasonable time, place, and manner restrictions because of the unique characteristics of the school environment. A school may limit student speech, for example, through reasonable school-wide policies against cyberbullying. Additionally, schools may prohibit vulgar or offensive speech that is inconsistent with the "fundamental values of public school education." *Bethel Sch. Dist. No. 43 v. Fraser*, 478 U.S. 675, 685-86 (1986).

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Establishment Clause: Under the First Amendment’s Establishment Clause, school officials cannot favor one religion over another or favor religion over nonbelief. In practice, this means that school officials and teachers cannot conduct prayer or bible-reading sessions, organize or participate in student-led prayer, or hold a prayer at graduation or sporting events, even when participation is voluntary. *See, e.g., Abington Sch. Dist. v. Schempp*, 374 U.S. 203 (1963); *Engel v. Vitale*, 370 U.S. 421 (1962); *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 308 (2000); *Lee v. Weisman*, 505 U.S. 577 (1992). Teachers cannot lead students in devotional activities or encourage student participation in religious activity before or after school, during class, or at school-sponsored activities. In fact, in the public-school context, the Supreme Court has invalidated almost every instance of school- or teacher-sponsored religious expression. Under Virginia law, school boards are permitted to establish a daily observance of one minute of silence, but the school board must be careful to ensure that its policy has secular justifications and is not merely a pretense to encourage prayer. *See, e.g., Va. Code § 22.1-203; VIRGINIA STATE BOARD OF EDUCATION, GUIDELINES CONCERNING RELIGIOUS ACTIVITY IN THE PUBLIC SCHOOLS* (1995).

RIGHTS OF LGBTQ STUDENTS

Cultivating a Safe Environment: Bullying of lesbian, gay, bisexual, transgender, and queer (“LGBTQ”) students has been documented as pervasive at many schools and is all too often ignored, or even encouraged, by school officials. LGBTQ students have a right to live their authentic lives and express themselves at school. Students have a right to be out of the closet at school, and conversely, public schools are not allowed to “out” students publicly. School officials and administrators must ensure they are creating a safe learning environment and protecting LGBTQ students from bullying and harassment. *See, e.g., Title IX, 20 U.S.C. § 1681* (schools may be liable if they act with deliberate indifference in failing to protect students from severe harassment on the basis of sex).



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Discipline: The intimate relationships of LGBTQ students must be treated with equal dignity as those of heterosexual students. Policies that prohibit same-sex couples or dates from attending prom, homecoming, or other dance functions violates students’ rights under Title IX of the Education Amendments of 1972, the Equal Protection Clause of the U.S. Constitution, and the Bill of Rights of the Virginia Constitution. LGBTQ students should not be punished more severely than heterosexual students for similar behavior, including for displays of affection.

LGBTQ Student Organizations: Students interested in forming a student organization, typically called a gay-straight alliance (“GSA”), are to be treated the same as students forming any other noncurricular organization or club. *See, e.g., 20 U.S.C. § 4071(a)* (if a school allows any noncurricular student group to meet, it cannot deny other groups the same access based on the content of their interest); *Gay All. of Students v. Matthews*, 544 F.2d 162 (4th Cir. 1976).

Gender Markers, Pronouns, and Student Records: Students should be addressed using their preferred names and pronouns. Refusing to do so, or refusing to update the gender markers on a student’s records when provided with appropriate documentation, may be considered a form of sex-based discrimination under federal law. *See Grimm v. Gloucester County Sch. Bd.*, Civil No. 4:15-cv-52, 2019 U.S. Dist. Lexis 138246 (E.D. Va. Aug. 9, 2019). Likewise, a student’s right to privacy includes a student’s sexual orientation or gender identity. It is against the law for school officials to disclose or compel students to disclose this information, even if the student appears open about their sexual orientation or gender identity. *See C.N. v. Wolf*, 410 F. Supp. 2d 894, 903 (C.D. Cal. 2005).



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DISCIPLINE AND ARRESTS

Generally: School discipline policies and practices should be fair and equitable and should prioritize prevention and intervention rather than harsh punishments like suspension, expulsion, and referral to law enforcement. The goal of discipline should be to teach appropriate behaviors and minimize the time students spend out of class. In Spring 2015, the Center for Public Integrity released a study finding that Virginia led the country in schools referring students to law enforcement, a phenomenon known as the “school-to-prison pipeline.” Additional studies conducted by the Virginia Department of Education found that African American students and students with disabilities were disproportionately represented in both suspensions and referrals to law enforcement throughout Virginia schools. These disparities open up school districts to potential legal challenges for race and disability discrimination under federal civil rights laws. *See, e.g.*, Complaint against Richmond Public Schools, available at <https://acluva.org/en/cases/equal-treatment-richmond-public-school-students>. In order to avoid potential legal problems, and to provide a more equitable school environment, school officials should reevaluate and revise their current discipline policies and practices to create a more positive and preventative approach to student conduct. The Virginia Board of Education has provided a blueprint for schools to use in revising their outdated practices – the Model Guidance for Positive, Preventative Code of Student Conduct Policy and Alternatives to Suspension, available at http://www.doe.virginia.gov/support/student_conduct/index.shtml.

Due Process: The U.S. Constitution requires that students receive due process before disciplinary measures are imposed. This means that school officials must follow certain procedures before they can suspend or expel students from school. Students are generally entitled to receive notice prior to any suspension or expulsion. The notice must include the facts concerning the suspension or expulsion, and the basis for any accusations. The notice must also provide students an opportunity to explain their side. *See, e.g., Goss v. Lopez*, 419 U.S. 565 (1975). For Virginia’s specific procedural requirements, see Va. Code § 22.1-276.01 *et seq.*

Corporal Punishment: Corporal or physical punishment of students is strictly prohibited by Virginia law. *See* Va. Code § 22.1-279.1.

School Resource Officers: School Resource Officers (“SROs”) can protect students from outside danger, but often punish minor behaviors through ticketing and arrests. Law enforcement intervention should typically be a last resort for minor violations best handled by schools as discipline issues. For additional resources on how to limit disproportionate school-based arrests or referrals to law enforcement, visit the Model Guidance for Positive, Preventative Code of Student Conduct Policy and Alternatives to Suspension, available at http://www.doe.virginia.gov/support/student_conduct/index.shtml.



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RIGHTS OF STUDENTS WITH DISABILITIES

Students with disabilities are provided legal protections under several federal laws. The Individuals with Disabilities Education Act (“IDEA”) requires that public schools provide eligible students with disabilities a “free, appropriate public education” in the least restrictive environment. *See* 20 U.S.C. § 1400 *et seq.* As part of the IDEA, schools must affirmatively locate, identify, and evaluate children in their district for special education and related services, a process known as “child find.” Parents may also request an evaluation at any time in writing or by speaking to a teacher or administrator, and the school district must respond to the parent’s request. Schools must educate students with disabilities in the least restrictive setting possible, with an emphasis on inclusion and integration in the regular education classroom where feasible. Additionally, students receiving special education services under the IDEA, as well as students suspected of being eligible to receive services, are entitled to certain protections and safeguards in the school discipline process. *See* 34 C.F.R. § 300.530 *et seq.*

Students with disabilities are also provided with protections under Section 504 of the Rehabilitation Act of 1974 (“Section 504”) and Title II of the Americans with Disabilities Act (“ADA”). Section 504 and the ADA prohibit discrimination against students with disabilities. This means that schools are prohibited by federal law from denying students with disabilities equal access to academic courses, field trips, extracurricular activities, school technology, and health services. School officials also have a duty to ensure that students with disabilities are not being discriminated against by being denied necessary accommodations. Restricting access to educational activities and opportunities, ignoring harassment and bullying, and failing to train staff on compliance with these laws is also prohibited under Section 504 and the ADA. *See also* Va. Code § 22.1-213 *et seq.*

RIGHTS OF IMMIGRANT STUDENTS

Schools cannot discriminate against students on the basis of race, color, or national origin. This includes discriminating against students on the basis of their immigration status. Undocumented students have a right to a free public education in your school district regardless of their immigration status, and schools cannot deny students of this right. *See, e.g., Plyler v. Doe*, 457 U.S. 202 (1982). Likewise, schools are not permitted to deny enrollment to a student based on their undocumented status; treat a student differently to determine residency; make inquiries of students or parents that may expose their undocumented status; require social security numbers from parents or students for purposes of enrollment; or engage in any other practices which may chill the right of access to school. Schools cannot turn away students with limited English proficiency; they must be provided with language instruction. *See, e.g., Lau v. Nichols*, 414 U.S. 563 (1974).

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RIGHTS OF PREGNANT STUDENTS

Schools are prohibited from excluding pregnant students and students with children under Title IX of the Education Amendments of 1972. This means that schools must also ensure that pregnant students or students with children have access to educational instruction, school activities, and reasonable accommodations, to the same extent that students with temporary medical conditions are given access, including the ability to make up missed classwork and learn in a safe, nonjudgmental environment. Schools are also not allowed to punish students who choose to terminate a pregnancy or to reveal a student's private medical information.



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Mr. Chuck Winkler
Fluvanna County
14455 James Madison Highway
Palmyra, VA 22963

RE: Students' Rights Reminder for the 2019-2020 Academic Year

Dear Superintendent,

As our communities prepare for the new academic year and students head back to school, it is important to be aware of the key issues affecting Virginia's students and their rights. Being aware of students' rights under state and federal law can help school officials avoid any potential legal complications and contribute to a positive learning environment that will allow each student to thrive.



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Summarized below you will find information regarding: student speech rights; the Pledge of Allegiance; censorship; religious beliefs and accommodations; the rights of students who identify as LGBTQ; discipline and arrests; the rights of students with disabilities; the rights of students who are immigrants; and the rights of students who are pregnant.

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DISCIPLINE AND ARRESTS

Generally: School discipline policies and practices should be fair and equitable and should prioritize prevention and intervention rather than harsh punishments like suspension, expulsion, and referral to law enforcement. The goal of discipline should be to teach appropriate behaviors and minimize the time students spend out of class. In Spring 2015, the Center for Public Integrity released a study finding that Virginia led the country in schools referring students to law enforcement, a phenomenon known as the “school-to-prison pipeline.” Additional studies conducted by the Virginia Department of Education found that African American students and students with disabilities were disproportionately represented in both suspensions and referrals to law enforcement throughout Virginia schools. These disparities open up school districts to potential legal challenges for race and disability discrimination under federal civil rights laws. *See, e.g.*, Complaint against Richmond Public Schools, available at <https://acluva.org/en/cases/equal-treatment-richmond-public-school-students>. In order to avoid potential legal problems, and to provide a more equitable school environment, school officials should reevaluate and revise their current discipline policies and practices to create a more positive and preventative approach to student conduct. The Virginia Board of Education has provided a blueprint for schools to use in revising their outdated practices – the Model Guidance for Positive, Preventative Code of Student Conduct Policy and Alternatives to Suspension, available at http://www.doe.virginia.gov/support/student_conduct/index.shtml.

Due Process: The U.S. Constitution requires that students receive due process before disciplinary measures are imposed. This means that school officials must follow certain procedures before they can suspend or expel students from school. Students are generally entitled to receive notice prior to any suspension or expulsion. The notice must include the facts concerning the suspension or expulsion, and the basis for any accusations. The notice must also provide students an opportunity to explain their side. *See, e.g., Goss v. Lopez*, 419 U.S. 565 (1975). For Virginia’s specific procedural requirements, see Va. Code § 22.1-276.01 *et seq.*

Corporal Punishment: Corporal or physical punishment of students is strictly prohibited by Virginia law. *See* Va. Code § 22.1-279.1.

School Resource Officers: School Resource Officers (“SROs”) can protect students from outside danger, but often punish minor behaviors through ticketing and arrests. Law enforcement intervention should typically be a last resort for minor violations best handled by schools as discipline issues. For additional resources on how to limit disproportionate school-based arrests or referrals to law enforcement, visit the Model Guidance for Positive, Preventative Code of Student Conduct Policy and Alternatives to Suspension, available at http://www.doe.virginia.gov/support/student_conduct/index.shtml.



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RIGHTS OF STUDENTS WITH DISABILITIES

Students with disabilities are provided legal protections under several federal laws. The Individuals with Disabilities Education Act (“IDEA”) requires that public schools provide eligible students with disabilities a “free, appropriate public education” in the least restrictive environment. *See* 20 U.S.C. § 1400 *et seq.* As part of the IDEA, schools must affirmatively locate, identify, and evaluate children in their district for special education and related services, a process known as “child find.” Parents may also request an evaluation at any time in writing or by speaking to a teacher or administrator, and the school district must respond to the parent’s request. Schools must educate students with disabilities in the least restrictive setting possible, with an emphasis on inclusion and integration in the regular education classroom where feasible. Additionally, students receiving special education services under the IDEA, as well as students suspected of being eligible to receive services, are entitled to certain protections and safeguards in the school discipline process. *See* 34 C.F.R. § 300.530 *et seq.*

Students with disabilities are also provided with protections under Section 504 of the Rehabilitation Act of 1974 (“Section 504”) and Title II of the Americans with Disabilities Act (“ADA”). Section 504 and the ADA prohibit discrimination against students with disabilities. This means that schools are prohibited by federal law from denying students with disabilities equal access to academic courses, field trips, extracurricular activities, school technology, and health services. School officials also have a duty to ensure that students with disabilities are not being discriminated against by being denied necessary accommodations. Restricting access to educational activities and opportunities, ignoring harassment and bullying, and failing to train staff on compliance with these laws is also prohibited under Section 504 and the ADA. *See also* Va. Code § 22.1-213 *et seq.*

RIGHTS OF IMMIGRANT STUDENTS

Schools cannot discriminate against students on the basis of race, color, or national origin. This includes discriminating against students on the basis of their immigration status. Undocumented students have a right to a free public education in your school district regardless of their immigration status, and schools cannot deny students of this right. *See, e.g., Plyler v. Doe*, 457 U.S. 202 (1982). Likewise, schools are not permitted to deny enrollment to a student based on their undocumented status; treat a student differently to determine residency; make inquiries of students or parents that may expose their undocumented status; require social security numbers from parents or students for purposes of enrollment; or engage in any other practices which may chill the right of access to school. Schools cannot turn away students with limited English proficiency; they must be provided with language instruction. *See, e.g., Lau v. Nichols*, 414 U.S. 563 (1974).

School officials should not allow immigration enforcement actions on school grounds without a judicial warrant based on probable cause that a criminal violation of the immigration laws has occurred. Schools should not call immigration authorities on students or consent to any immigration enforcement on school grounds without a criminal warrant. There is no state law requiring any state or local official to contact immigration officials nor any state or federal law prohibiting adoption of a policy that protects students and teachers from immigration action in the absence of a judicial criminal warrant.

RIGHTS OF PREGNANT STUDENTS

Schools are prohibited from excluding pregnant students and students with children under Title IX of the Education Amendments of 1972. This means that schools must also ensure that pregnant students or students with children have access to educational instruction, school activities, and reasonable accommodations, to the same extent that students with temporary medical conditions are given access, including the ability to make up missed classwork and learn in a safe, nonjudgmental environment. Schools are also not allowed to punish students who choose to terminate a pregnancy or to reveal a student's private medical information.



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Tamara Sterling
Franklin
207 W Second Ave
Franklin, VA 23851

RE: Students' Rights Reminder for the 2019-2020 Academic Year

Dear Superintendent,

As our communities prepare for the new academic year and students head back to school, it is important to be aware of the key issues affecting Virginia's students and their rights. Being aware of students' rights under state and federal law can help school officials avoid any potential legal complications and contribute to a positive learning environment that will allow each student to thrive.



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Federal and state laws afford children enrolled in school protection from discrimination and harassment based on race, color, religion, sex, national origin, or disability. Schools are responsible for ensuring these rights are protected and for promoting a safe school atmosphere. Additionally, schools are responsible for ensuring that students' right to free speech is respected and that the freedom to practice their religion—or no religion at all— is upheld.

Summarized below you will find information regarding: student speech rights; the Pledge of Allegiance; censorship; religious beliefs and accommodations; the rights of students who identify as LGBTQ; discipline and arrests; the rights of students with disabilities; the rights of students who are immigrants; and the rights of students who are pregnant.

We hope this information will help your school district understand the rights of students in schools and guide you in taking actions that ensure student rights are protected in a safe and supportive environment. Please do not hesitate to contact the ACLU of Virginia if you have any questions about these issues or if we can be of any assistance to you in evaluating and formulating school policy on any of these matters. We can be reached at (804) 644-8022 or acluva@acluva.org.

Very truly yours,

A handwritten signature in blue ink, which appears to read "Claire G. Gastañaga". The signature is fluid and cursive.

Claire G. Gastañaga
Executive Director



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STUDENT SPEECH RIGHTS

The First Amendment ensures that students cannot be punished for exercising free speech rights, even if administrators do not approve of their message. In the landmark Supreme Court case *Tinker v. Des Moines Independent Community School District*, the ACLU successfully challenged a school district's decision to suspend three students for wearing armbands in protest of the Vietnam War. 393 U.S. 503 (1969). The court declared that students and teachers do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." *Id.* at 506. Over the years, the ACLU has also successfully defended the right of students to wear an anti-abortion armband, a pro-LGBTQ t-shirt, and shirts critical of political figures. Schools may not discipline students for expressing an idea or political viewpoint in class or during school activities, as long as it does not cause a substantial disruption to the school environment.

It is true that the constitutional rights of students in public school are not the same as those of adults exercising First Amendment rights on public streets. Students' speech rights may be limited by reasonable time, place, and manner restrictions because of the unique characteristics of the school environment. A school may limit student speech, for example, through reasonable school-wide policies against cyberbullying. Additionally, schools may prohibit vulgar or offensive speech that is inconsistent with the "fundamental values of public school education." *Bethel Sch. Dist. No. 43 v. Fraser*, 478 U.S. 675, 685-86 (1986).

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RELIGIOUS BELIEFS AND ACCOMMODATIONS

Free Exercise Clause: Under the First Amendment’s Free Exercise Clause, students have the right to worship as they see fit, with only limited restrictions. This means that while at school, students are free to practice their religion or nonreligion and to express themselves religiously without interference by school officials. Students may, for example, wear religious attire or clothing with religious messaging to school; post religious messages or images on their lockers; or bring religious materials, including religious texts or objects, to school. School officials may not, for instance, require students to remove their hijab, yarmulke, or other head covering, as it substantially burdens the practice of the student’s religion. *See, e.g., Va. Code § 22.1-203.1 et seq.; VIRGINIA STATE BOARD OF EDUCATION, GUIDELINES CONCERNING RELIGIOUS ACTIVITY IN THE PUBLIC SCHOOLS* (1995).

Establishment Clause: Under the First Amendment’s Establishment Clause, school officials cannot favor one religion over another or favor religion over nonbelief. In practice, this means that school officials and teachers cannot conduct prayer or bible-reading sessions, organize or participate in student-led prayer, or hold a prayer at graduation or sporting events, even when participation is voluntary. *See, e.g., Abington Sch. Dist. v. Schempp*, 374 U.S. 203 (1963); *Engel v. Vitale*, 370 U.S. 421 (1962); *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 308 (2000); *Lee v. Weisman*, 505 U.S. 577 (1992). Teachers cannot lead students in devotional activities or encourage student participation in religious activity before or after school, during class, or at school-sponsored activities. In fact, in the public-school context, the Supreme Court has invalidated almost every instance of school- or teacher-sponsored religious expression. Under Virginia law, school boards are permitted to establish a daily observance of one minute of silence, but the school board must be careful to ensure that its policy has secular justifications and is not merely a pretense to encourage prayer. *See, e.g., Va. Code § 22.1-203; VIRGINIA STATE BOARD OF EDUCATION, GUIDELINES CONCERNING RELIGIOUS ACTIVITY IN THE PUBLIC SCHOOLS* (1995).

RIGHTS OF LGBTQ STUDENTS

Cultivating a Safe Environment: Bullying of lesbian, gay, bisexual, transgender, and queer (“LGBTQ”) students has been documented as pervasive at many schools and is all too often ignored, or even encouraged, by school officials. LGBTQ students have a right to live their authentic lives and express themselves at school. Students have a right to be out of the closet at school, and conversely, public schools are not allowed to “out” students publicly. School officials and administrators must ensure they are creating a safe learning environment and protecting LGBTQ students from bullying and harassment. *See, e.g., Title IX, 20 U.S.C. § 1681* (schools may be liable if they act with deliberate indifference in failing to protect students from severe harassment on the basis of sex).



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Restrooms & Locker Rooms: Transgender students must be allowed to use the restroom facilities consistent with their gender identity. Schools cannot create policies that require transgender students to use restrooms or locker rooms that do not correspond with their gender identity, and schools may not create policies that require transgender students to use single-user facilities. *See Grimm v. Gloucester County Sch. Bd.*, Civil No. 4:15-cv-52, 2019 U.S. Dist. Lexis 138246 (E.D. Va. Aug. 9, 2019).

Dress Code: School officials cannot force students to wear clothing inconsistent with their gender identity. Public schools may have dress codes, but dress codes cannot treat students differently based on their gender, force students to conform to sex stereotypes, or censor particular viewpoints. Schools cannot enact dress codes based on the stereotype that only girls can wear some types of clothes and only boys wear other types of clothes. *See, e.g., U.S. v. Virginia*, 518 U.S. 515, 533 (1996) (government actors must not treat male and female students differently because of “overbroad generalizations about the different talents, capacities, or preferences of males and females.”). Schools may, for example, require that skirts be a certain length; however, they cannot require that some students wear skirts and prohibit others from doing so based on the student’s sex or gender expression. This also applies to pants, ties, or other clothing associated with traditional gender roles. And it applies to attire requirements for homecoming, prom, graduation, and other special school events.

Discipline: The intimate relationships of LGBTQ students must be treated with equal dignity as those of heterosexual students. Policies that prohibit same-sex couples or dates from attending prom, homecoming, or other dance functions violates students’ rights under Title IX of the Education Amendments of 1972, the Equal Protection Clause of the U.S. Constitution, and the Bill of Rights of the Virginia Constitution. LGBTQ students should not be punished more severely than heterosexual students for similar behavior, including for displays of affection.

LGBTQ Student Organizations: Students interested in forming a student organization, typically called a gay-straight alliance (“GSA”), are to be treated the same as students forming any other noncurricular organization or club. *See, e.g., 20 U.S.C. § 4071(a)* (if a school allows any noncurricular student group to meet, it cannot deny other groups the same access based on the content of their interest); *Gay All. of Students v. Matthews*, 544 F.2d 162 (4th Cir. 1976).

Gender Markers, Pronouns, and Student Records: Students should be addressed using their preferred names and pronouns. Refusing to do so, or refusing to update the gender markers on a student’s records when provided with appropriate documentation, may be considered a form of sex-based discrimination under federal law. *See Grimm v. Gloucester County Sch. Bd.*, Civil No. 4:15-cv-52, 2019 U.S. Dist. Lexis 138246 (E.D. Va. Aug. 9, 2019). Likewise, a student’s right to privacy includes a student’s sexual orientation or gender identity. It is against the law for school officials to disclose or compel students to disclose this information, even if the student appears open about their sexual orientation or gender identity. *See C.N. v. Wolf*, 410 F. Supp. 2d 894, 903 (C.D. Cal. 2005).



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Schools are prohibited from excluding pregnant students and students with children under Title IX of the Education Amendments of 1972. This means that schools must also ensure that pregnant students or students with children have access to educational instruction, school activities, and reasonable accommodations, to the same extent that students with temporary medical conditions are given access, including the ability to make up missed classwork and learn in a safe, nonjudgmental environment. Schools are also not allowed to punish students who choose to terminate a pregnancy or to reveal a student's private medical information.



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Dr. W. Mark Church
Franklin County
25 Bernard Road
Rocky Mount, VA 24151

RE: Students' Rights Reminder for the 2019-2020 Academic Year

Dear Superintendent,

As our communities prepare for the new academic year and students head back to school, it is important to be aware of the key issues affecting Virginia's students and their rights. Being aware of students' rights under state and federal law can help school officials avoid any potential legal complications and contribute to a positive learning environment that will allow each student to thrive.

Federal and state laws afford children enrolled in school protection from discrimination and harassment based on race, color, religion, sex, national origin, or disability. Schools are responsible for ensuring these rights are protected and for promoting a safe school atmosphere. Additionally, schools are responsible for ensuring that students' right to free speech is respected and that the freedom to practice their religion—or no religion at all—is upheld.

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Discipline: The intimate relationships of LGBTQ students must be treated with equal dignity as those of heterosexual students. Policies that prohibit same-sex couples or dates from attending prom, homecoming, or other dance functions violates students’ rights under Title IX of the Education Amendments of 1972, the Equal Protection Clause of the U.S. Constitution, and the Bill of Rights of the Virginia Constitution. LGBTQ students should not be punished more severely than heterosexual students for similar behavior, including for displays of affection.

LGBTQ Student Organizations: Students interested in forming a student organization, typically called a gay-straight alliance (“GSA”), are to be treated the same as students forming any other noncurricular organization or club. *See, e.g., 20 U.S.C. § 4071(a)* (if a school allows any noncurricular student group to meet, it cannot deny other groups the same access based on the content of their interest); *Gay All. of Students v. Matthews*, 544 F.2d 162 (4th Cir. 1976).

Gender Markers, Pronouns, and Student Records: Students should be addressed using their preferred names and pronouns. Refusing to do so, or refusing to update the gender markers on a student’s records when provided with appropriate documentation, may be considered a form of sex-based discrimination under federal law. *See Grimm v. Gloucester County Sch. Bd.*, Civil No. 4:15-cv-52, 2019 U.S. Dist. Lexis 138246 (E.D. Va. Aug. 9, 2019). Likewise, a student’s right to privacy includes a student’s sexual orientation or gender identity. It is against the law for school officials to disclose or compel students to disclose this information, even if the student appears open about their sexual orientation or gender identity. *See C.N. v. Wolf*, 410 F. Supp. 2d 894, 903 (C.D. Cal. 2005).



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DISCIPLINE AND ARRESTS

Generally: School discipline policies and practices should be fair and equitable and should prioritize prevention and intervention rather than harsh punishments like suspension, expulsion, and referral to law enforcement. The goal of discipline should be to teach appropriate behaviors and minimize the time students spend out of class. In Spring 2015, the Center for Public Integrity released a study finding that Virginia led the country in schools referring students to law enforcement, a phenomenon known as the “school-to-prison pipeline.” Additional studies conducted by the Virginia Department of Education found that African American students and students with disabilities were disproportionately represented in both suspensions and referrals to law enforcement throughout Virginia schools. These disparities open up school districts to potential legal challenges for race and disability discrimination under federal civil rights laws. *See, e.g.*, Complaint against Richmond Public Schools, available at <https://acluva.org/en/cases/equal-treatment-richmond-public-school-students>. In order to avoid potential legal problems, and to provide a more equitable school environment, school officials should reevaluate and revise their current discipline policies and practices to create a more positive and preventative approach to student conduct. The Virginia Board of Education has provided a blueprint for schools to use in revising their outdated practices – the Model Guidance for Positive, Preventative Code of Student Conduct Policy and Alternatives to Suspension, available at http://www.doe.virginia.gov/support/student_conduct/index.shtml.

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Corporal Punishment: Corporal or physical punishment of students is strictly prohibited by Virginia law. *See* Va. Code § 22.1-279.1.

School Resource Officers: School Resource Officers (“SROs”) can protect students from outside danger, but often punish minor behaviors through ticketing and arrests. Law enforcement intervention should typically be a last resort for minor violations best handled by schools as discipline issues. For additional resources on how to limit disproportionate school-based arrests or referrals to law enforcement, visit the Model Guidance for Positive, Preventative Code of Student Conduct Policy and Alternatives to Suspension, available at http://www.doe.virginia.gov/support/student_conduct/index.shtml.



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RIGHTS OF STUDENTS WITH DISABILITIES

Students with disabilities are provided legal protections under several federal laws. The Individuals with Disabilities Education Act (“IDEA”) requires that public schools provide eligible students with disabilities a “free, appropriate public education” in the least restrictive environment. *See* 20 U.S.C. § 1400 *et seq.* As part of the IDEA, schools must affirmatively locate, identify, and evaluate children in their district for special education and related services, a process known as “child find.” Parents may also request an evaluation at any time in writing or by speaking to a teacher or administrator, and the school district must respond to the parent’s request. Schools must educate students with disabilities in the least restrictive setting possible, with an emphasis on inclusion and integration in the regular education classroom where feasible. Additionally, students receiving special education services under the IDEA, as well as students suspected of being eligible to receive services, are entitled to certain protections and safeguards in the school discipline process. *See* 34 C.F.R. § 300.530 *et seq.*

Students with disabilities are also provided with protections under Section 504 of the Rehabilitation Act of 1974 (“Section 504”) and Title II of the Americans with Disabilities Act (“ADA”). Section 504 and the ADA prohibit discrimination against students with disabilities. This means that schools are prohibited by federal law from denying students with disabilities equal access to academic courses, field trips, extracurricular activities, school technology, and health services. School officials also have a duty to ensure that students with disabilities are not being discriminated against by being denied necessary accommodations. Restricting access to educational activities and opportunities, ignoring harassment and bullying, and failing to train staff on compliance with these laws is also prohibited under Section 504 and the ADA. *See also* Va. Code § 22.1-213 *et seq.*

RIGHTS OF IMMIGRANT STUDENTS

Schools cannot discriminate against students on the basis of race, color, or national origin. This includes discriminating against students on the basis of their immigration status. Undocumented students have a right to a free public education in your school district regardless of their immigration status, and schools cannot deny students of this right. *See, e.g., Plyler v. Doe*, 457 U.S. 202 (1982). Likewise, schools are not permitted to deny enrollment to a student based on their undocumented status; treat a student differently to determine residency; make inquiries of students or parents that may expose their undocumented status; require social security numbers from parents or students for purposes of enrollment; or engage in any other practices which may chill the right of access to school. Schools cannot turn away students with limited English proficiency; they must be provided with language instruction. *See, e.g., Lau v. Nichols*, 414 U.S. 563 (1974).

School officials should not allow immigration enforcement actions on school grounds without a judicial warrant based on probable cause that a criminal violation of the immigration laws has occurred. Schools should not call immigration authorities on students or consent to any immigration enforcement on school grounds without a criminal warrant. There is no state law requiring any state or local official to contact immigration officials nor any state or federal law prohibiting adoption of a policy that protects students and teachers from immigration action in the absence of a judicial criminal warrant.

RIGHTS OF PREGNANT STUDENTS

Schools are prohibited from excluding pregnant students and students with children under Title IX of the Education Amendments of 1972. This means that schools must also ensure that pregnant students or students with children have access to educational instruction, school activities, and reasonable accommodations, to the same extent that students with temporary medical conditions are given access, including the ability to make up missed classwork and learn in a safe, nonjudgmental environment. Schools are also not allowed to punish students who choose to terminate a pregnancy or to reveal a student's private medical information.



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Dr. David T. Sovine
Frederick County
P O Box 3508
Winchester, VA 22604

RE: Students' Rights Reminder for the 2019-2020 Academic Year

Dear Superintendent,

As our communities prepare for the new academic year and students head back to school, it is important to be aware of the key issues affecting Virginia's students and their rights. Being aware of students' rights under state and federal law can help school officials avoid any potential legal complications and contribute to a positive learning environment that will allow each student to thrive.



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Federal and state laws afford children enrolled in school protection from discrimination and harassment based on race, color, religion, sex, national origin, or disability. Schools are responsible for ensuring these rights are protected and for promoting a safe school atmosphere. Additionally, schools are responsible for ensuring that students' right to free speech is respected and that the freedom to practice their religion—or no religion at all— is upheld.

Summarized below you will find information regarding: student speech rights; the Pledge of Allegiance; censorship; religious beliefs and accommodations; the rights of students who identify as LGBTQ; discipline and arrests; the rights of students with disabilities; the rights of students who are immigrants; and the rights of students who are pregnant.

We hope this information will help your school district understand the rights of students in schools and guide you in taking actions that ensure student rights are protected in a safe and supportive environment. Please do not hesitate to contact the ACLU of Virginia if you have any questions about these issues or if we can be of any assistance to you in evaluating and formulating school policy on any of these matters. We can be reached at (804) 644-8022 or acluva@acluva.org.

Very truly yours,

A handwritten signature in blue ink, which appears to read "Claire G. Gastañaga". The signature is fluid and cursive.

Claire G. Gastañaga
Executive Director



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STUDENT SPEECH RIGHTS

The First Amendment ensures that students cannot be punished for exercising free speech rights, even if administrators do not approve of their message. In the landmark Supreme Court case *Tinker v. Des Moines Independent Community School District*, the ACLU successfully challenged a school district's decision to suspend three students for wearing armbands in protest of the Vietnam War. 393 U.S. 503 (1969). The court declared that students and teachers do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." *Id.* at 506. Over the years, the ACLU has also successfully defended the right of students to wear an anti-abortion armband, a pro-LGBTQ t-shirt, and shirts critical of political figures. Schools may not discipline students for expressing an idea or political viewpoint in class or during school activities, as long as it does not cause a substantial disruption to the school environment.

It is true that the constitutional rights of students in public school are not the same as those of adults exercising First Amendment rights on public streets. Students' speech rights may be limited by reasonable time, place, and manner restrictions because of the unique characteristics of the school environment. A school may limit student speech, for example, through reasonable school-wide policies against cyberbullying. Additionally, schools may prohibit vulgar or offensive speech that is inconsistent with the "fundamental values of public school education." *Bethel Sch. Dist. No. 43 v. Fraser*, 478 U.S. 675, 685-86 (1986).

School officials should take care, however, not to define peaceful assembly as behavior that causes a substantial disruption to school activities. If students engage in a walkout, school officials may choose to discipline students for missing class but may not engage in harsher punishment because of the message or political nature of the action. School officials must not draw distinctions based on the content of a student's speech or expressive activity in imposing discipline.

PLEDGE OF ALLEGIANCE

Schools cannot punish students for refusing to salute the flag or say the Pledge of Allegiance. *W.Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624 (1943); *Sherman v. Comm. Consol. Sch. Dist. 21*, 980 F.2d 437 (7th Cir. 1992). School officials also cannot force students to stand during the Pledge of Allegiance or leave the room if a student refuses to recite the Pledge. *See* Va. Code § 22.1-202(C) ("[N]o student shall be compelled to recite the Pledge if he, his parent or legal guardian objects on religious, philosophical or other grounds to his participating in this exercise.")

CENSORSHIP

Books: Banning books, removing books and materials from a classroom or library, or otherwise making it difficult for students to read a broad array of literature limits intellectual freedom. Making books and ideas unavailable based on their content or viewpoint or taking books out of schools because they are controversial, unpopular, or offensive, may violate the First Amendment. *See, e.g., Bd. of Educ. v. Pico*, 457 U.S. 853 (1982). Courts view school libraries as the main place where students exercise their freedom "to inquire, to study and to evaluate, to gain new maturity and understanding." *Id.* at 868.

Student Publications: Schools may review and control the content of school sponsored student publications including student newspapers, yearbooks, literary magazines, on-campus videos, and radio broadcasts. But schools cannot control student publications that are not sponsored or funded by the school, not done as part of a class or school project, or that are done on a student’s own time with their own resources. *See, e.g., Burt v. Barker*, 861 F.2d 1149 (9th Cir. 1988); *Fujishima v. Bd. of Ed.*, 160 F.2d 1355 (7th Cir. 1972); *Eisner v. Stanford Bd. of Ed.*, 440 F.2d 803 (2d Cir. 1971).

RELIGIOUS BELIEFS AND ACCOMMODATIONS

Free Exercise Clause: Under the First Amendment’s Free Exercise Clause, students have the right to worship as they see fit, with only limited restrictions. This means that while at school, students are free to practice their religion or nonreligion and to express themselves religiously without interference by school officials. Students may, for example, wear religious attire or clothing with religious messaging to school; post religious messages or images on their lockers; or bring religious materials, including religious texts or objects, to school. School officials may not, for instance, require students to remove their hijab, yarmulke, or other head covering, as it substantially burdens the practice of the student’s religion. *See, e.g., Va. Code § 22.1-203.1 et seq.; VIRGINIA STATE BOARD OF EDUCATION, GUIDELINES CONCERNING RELIGIOUS ACTIVITY IN THE PUBLIC SCHOOLS* (1995).

Establishment Clause: Under the First Amendment’s Establishment Clause, school officials cannot favor one religion over another or favor religion over nonbelief. In practice, this means that school officials and teachers cannot conduct prayer or bible-reading sessions, organize or participate in student-led prayer, or hold a prayer at graduation or sporting events, even when participation is voluntary. *See, e.g., Abington Sch. Dist. v. Schempp*, 374 U.S. 203 (1963); *Engel v. Vitale*, 370 U.S. 421 (1962); *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 308 (2000); *Lee v. Weisman*, 505 U.S. 577 (1992). Teachers cannot lead students in devotional activities or encourage student participation in religious activity before or after school, during class, or at school-sponsored activities. In fact, in the public-school context, the Supreme Court has invalidated almost every instance of school- or teacher-sponsored religious expression. Under Virginia law, school boards are permitted to establish a daily observance of one minute of silence, but the school board must be careful to ensure that its policy has secular justifications and is not merely a pretense to encourage prayer. *See, e.g., Va. Code § 22.1-203; VIRGINIA STATE BOARD OF EDUCATION, GUIDELINES CONCERNING RELIGIOUS ACTIVITY IN THE PUBLIC SCHOOLS* (1995).

RIGHTS OF LGBTQ STUDENTS

Cultivating a Safe Environment: Bullying of lesbian, gay, bisexual, transgender, and queer (“LGBTQ”) students has been documented as pervasive at many schools and is all too often ignored, or even encouraged, by school officials. LGBTQ students have a right to live their authentic lives and express themselves at school. Students have a right to be out of the closet at school, and conversely, public schools are not allowed to “out” students publicly. School officials and administrators must ensure they are creating a safe learning environment and protecting LGBTQ students from bullying and harassment. *See, e.g., Title IX, 20 U.S.C. § 1681* (schools may be liable if they act with deliberate indifference in failing to protect students from severe harassment on the basis of sex).



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Dr. Marceline Catlett
Fredericksburg
210 Ferdinand Street
Fredericksburg, VA 22401

RE: Students' Rights Reminder for the 2019-2020 Academic Year

Dear Superintendent,

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Claire G. Gastañaga
Executive Director



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RIGHTS OF LGBTQ STUDENTS

Cultivating a Safe Environment: Bullying of lesbian, gay, bisexual, transgender, and queer (“LGBTQ”) students has been documented as pervasive at many schools and is all too often ignored, or even encouraged, by school officials. LGBTQ students have a right to live their authentic lives and express themselves at school. Students have a right to be out of the closet at school, and conversely, public schools are not allowed to “out” students publicly. School officials and administrators must ensure they are creating a safe learning environment and protecting LGBTQ students from bullying and harassment. *See, e.g., Title IX, 20 U.S.C. § 1681* (schools may be liable if they act with deliberate indifference in failing to protect students from severe harassment on the basis of sex).



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Gender Markers, Pronouns, and Student Records: Students should be addressed using their preferred names and pronouns. Refusing to do so, or refusing to update the gender markers on a student’s records when provided with appropriate documentation, may be considered a form of sex-based discrimination under federal law. *See Grimm v. Gloucester County Sch. Bd.*, Civil No. 4:15-cv-52, 2019 U.S. Dist. Lexis 138246 (E.D. Va. Aug. 9, 2019). Likewise, a student’s right to privacy includes a student’s sexual orientation or gender identity. It is against the law for school officials to disclose or compel students to disclose this information, even if the student appears open about their sexual orientation or gender identity. *See C.N. v. Wolf*, 410 F. Supp. 2d 894, 903 (C.D. Cal. 2005).



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Corporal Punishment: Corporal or physical punishment of students is strictly prohibited by Virginia law. *See* Va. Code § 22.1-279.1.

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Students with disabilities are also provided with protections under Section 504 of the Rehabilitation Act of 1974 (“Section 504”) and Title II of the Americans with Disabilities Act (“ADA”). Section 504 and the ADA prohibit discrimination against students with disabilities. This means that schools are prohibited by federal law from denying students with disabilities equal access to academic courses, field trips, extracurricular activities, school technology, and health services. School officials also have a duty to ensure that students with disabilities are not being discriminated against by being denied necessary accommodations. Restricting access to educational activities and opportunities, ignoring harassment and bullying, and failing to train staff on compliance with these laws is also prohibited under Section 504 and the ADA. *See also* Va. Code § 22.1-213 *et seq.*

RIGHTS OF IMMIGRANT STUDENTS

Schools cannot discriminate against students on the basis of race, color, or national origin. This includes discriminating against students on the basis of their immigration status. Undocumented students have a right to a free public education in your school district regardless of their immigration status, and schools cannot deny students of this right. *See, e.g., Plyler v. Doe*, 457 U.S. 202 (1982). Likewise, schools are not permitted to deny enrollment to a student based on their undocumented status; treat a student differently to determine residency; make inquiries of students or parents that may expose their undocumented status; require social security numbers from parents or students for purposes of enrollment; or engage in any other practices which may chill the right of access to school. Schools cannot turn away students with limited English proficiency; they must be provided with language instruction. *See, e.g., Lau v. Nichols*, 414 U.S. 563 (1974).

School officials should not allow immigration enforcement actions on school grounds without a judicial warrant based on probable cause that a criminal violation of the immigration laws has occurred. Schools should not call immigration authorities on students or consent to any immigration enforcement on school grounds without a criminal warrant. There is no state law requiring any state or local official to contact immigration officials nor any state or federal law prohibiting adoption of a policy that protects students and teachers from immigration action in the absence of a judicial criminal warrant.

RIGHTS OF PREGNANT STUDENTS

Schools are prohibited from excluding pregnant students and students with children under Title IX of the Education Amendments of 1972. This means that schools must also ensure that pregnant students or students with children have access to educational instruction, school activities, and reasonable accommodations, to the same extent that students with temporary medical conditions are given access, including the ability to make up missed classwork and learn in a safe, nonjudgmental environment. Schools are also not allowed to punish students who choose to terminate a pregnancy or to reveal a student's private medical information.



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Mr. William H. Sturgill
Galax
223 Long St
Galax, VA 24333

RE: Students' Rights Reminder for the 2019-2020 Academic Year

Dear Superintendent,

As our communities prepare for the new academic year and students head back to school, it is important to be aware of the key issues affecting Virginia's students and their rights. Being aware of students' rights under state and federal law can help school officials avoid any potential legal complications and contribute to a positive learning environment that will allow each student to thrive.



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Federal and state laws afford children enrolled in school protection from discrimination and harassment based on race, color, religion, sex, national origin, or disability. Schools are responsible for ensuring these rights are protected and for promoting a safe school atmosphere. Additionally, schools are responsible for ensuring that students' right to free speech is respected and that the freedom to practice their religion—or no religion at all— is upheld.

Summarized below you will find information regarding: student speech rights; the Pledge of Allegiance; censorship; religious beliefs and accommodations; the rights of students who identify as LGBTQ; discipline and arrests; the rights of students with disabilities; the rights of students who are immigrants; and the rights of students who are pregnant.

We hope this information will help your school district understand the rights of students in schools and guide you in taking actions that ensure student rights are protected in a safe and supportive environment. Please do not hesitate to contact the ACLU of Virginia if you have any questions about these issues or if we can be of any assistance to you in evaluating and formulating school policy on any of these matters. We can be reached at (804) 644-8022 or acluva@acluva.org.

Very truly yours,

A handwritten signature in blue ink, which appears to read "Claire G. Gastañaga". The signature is fluid and cursive.

Claire G. Gastañaga
Executive Director



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STUDENT SPEECH RIGHTS

The First Amendment ensures that students cannot be punished for exercising free speech rights, even if administrators do not approve of their message. In the landmark Supreme Court case *Tinker v. Des Moines Independent Community School District*, the ACLU successfully challenged a school district's decision to suspend three students for wearing armbands in protest of the Vietnam War. 393 U.S. 503 (1969). The court declared that students and teachers do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." *Id.* at 506. Over the years, the ACLU has also successfully defended the right of students to wear an anti-abortion armband, a pro-LGBTQ t-shirt, and shirts critical of political figures. Schools may not discipline students for expressing an idea or political viewpoint in class or during school activities, as long as it does not cause a substantial disruption to the school environment.

It is true that the constitutional rights of students in public school are not the same as those of adults exercising First Amendment rights on public streets. Students' speech rights may be limited by reasonable time, place, and manner restrictions because of the unique characteristics of the school environment. A school may limit student speech, for example, through reasonable school-wide policies against cyberbullying. Additionally, schools may prohibit vulgar or offensive speech that is inconsistent with the "fundamental values of public school education." *Bethel Sch. Dist. No. 43 v. Fraser*, 478 U.S. 675, 685-86 (1986).

School officials should take care, however, not to define peaceful assembly as behavior that causes a substantial disruption to school activities. If students engage in a walkout, school officials may choose to discipline students for missing class but may not engage in harsher punishment because of the message or political nature of the action. School officials must not draw distinctions based on the content of a student's speech or expressive activity in imposing discipline.

PLEDGE OF ALLEGIANCE

Schools cannot punish students for refusing to salute the flag or say the Pledge of Allegiance. *W.Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624 (1943); *Sherman v. Comm. Consol. Sch. Dist. 21*, 980 F.2d 437 (7th Cir. 1992). School officials also cannot force students to stand during the Pledge of Allegiance or leave the room if a student refuses to recite the Pledge. *See* Va. Code § 22.1-202(C) ("[N]o student shall be compelled to recite the Pledge if he, his parent or legal guardian objects on religious, philosophical or other grounds to his participating in this exercise.")

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Dr. Terry E. Arbogast II
Giles County
151 School Rd
Pearisburg, VA 24134

RE: Students' Rights Reminder for the 2019-2020 Academic Year

Dear Superintendent,

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Summarized below you will find information regarding: student speech rights; the Pledge of Allegiance; censorship; religious beliefs and accommodations; the rights of students who identify as LGBTQ; discipline and arrests; the rights of students with disabilities; the rights of students who are immigrants; and the rights of students who are pregnant.

We hope this information will help your school district understand the rights of students in schools and guide you in taking actions that ensure student rights are protected in a safe and supportive environment. Please do not hesitate to contact the ACLU of Virginia if you have any questions about these issues or if we can be of any assistance to you in evaluating and formulating school policy on any of these matters. We can be reached at (804) 644-8022 or acluva@acluva.org.

Very truly yours,

A handwritten signature in blue ink, which appears to read "Claire G. Gastañaga". The signature is fluid and cursive.

Claire G. Gastañaga
Executive Director



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STUDENT SPEECH RIGHTS

The First Amendment ensures that students cannot be punished for exercising free speech rights, even if administrators do not approve of their message. In the landmark Supreme Court case *Tinker v. Des Moines Independent Community School District*, the ACLU successfully challenged a school district's decision to suspend three students for wearing armbands in protest of the Vietnam War. 393 U.S. 503 (1969). The court declared that students and teachers do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." *Id.* at 506. Over the years, the ACLU has also successfully defended the right of students to wear an anti-abortion armband, a pro-LGBTQ t-shirt, and shirts critical of political figures. Schools may not discipline students for expressing an idea or political viewpoint in class or during school activities, as long as it does not cause a substantial disruption to the school environment.

It is true that the constitutional rights of students in public school are not the same as those of adults exercising First Amendment rights on public streets. Students' speech rights may be limited by reasonable time, place, and manner restrictions because of the unique characteristics of the school environment. A school may limit student speech, for example, through reasonable school-wide policies against cyberbullying. Additionally, schools may prohibit vulgar or offensive speech that is inconsistent with the "fundamental values of public school education." *Bethel Sch. Dist. No. 43 v. Fraser*, 478 U.S. 675, 685-86 (1986).

School officials should take care, however, not to define peaceful assembly as behavior that causes a substantial disruption to school activities. If students engage in a walkout, school officials may choose to discipline students for missing class but may not engage in harsher punishment because of the message or political nature of the action. School officials must not draw distinctions based on the content of a student's speech or expressive activity in imposing discipline.

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CENSORSHIP

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RIGHTS OF LGBTQ STUDENTS

Cultivating a Safe Environment: Bullying of lesbian, gay, bisexual, transgender, and queer (“LGBTQ”) students has been documented as pervasive at many schools and is all too often ignored, or even encouraged, by school officials. LGBTQ students have a right to live their authentic lives and express themselves at school. Students have a right to be out of the closet at school, and conversely, public schools are not allowed to “out” students publicly. School officials and administrators must ensure they are creating a safe learning environment and protecting LGBTQ students from bullying and harassment. *See, e.g., Title IX, 20 U.S.C. § 1681* (schools may be liable if they act with deliberate indifference in failing to protect students from severe harassment on the basis of sex).



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Discipline: The intimate relationships of LGBTQ students must be treated with equal dignity as those of heterosexual students. Policies that prohibit same-sex couples or dates from attending prom, homecoming, or other dance functions violates students’ rights under Title IX of the Education Amendments of 1972, the Equal Protection Clause of the U.S. Constitution, and the Bill of Rights of the Virginia Constitution. LGBTQ students should not be punished more severely than heterosexual students for similar behavior, including for displays of affection.

LGBTQ Student Organizations: Students interested in forming a student organization, typically called a gay-straight alliance (“GSA”), are to be treated the same as students forming any other noncurricular organization or club. *See, e.g., 20 U.S.C. § 4071(a)* (if a school allows any noncurricular student group to meet, it cannot deny other groups the same access based on the content of their interest); *Gay All. of Students v. Matthews*, 544 F.2d 162 (4th Cir. 1976).

Gender Markers, Pronouns, and Student Records: Students should be addressed using their preferred names and pronouns. Refusing to do so, or refusing to update the gender markers on a student’s records when provided with appropriate documentation, may be considered a form of sex-based discrimination under federal law. *See Grimm v. Gloucester County Sch. Bd.*, Civil No. 4:15-cv-52, 2019 U.S. Dist. Lexis 138246 (E.D. Va. Aug. 9, 2019). Likewise, a student’s right to privacy includes a student’s sexual orientation or gender identity. It is against the law for school officials to disclose or compel students to disclose this information, even if the student appears open about their sexual orientation or gender identity. *See C.N. v. Wolf*, 410 F. Supp. 2d 894, 903 (C.D. Cal. 2005).



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Generally: School discipline policies and practices should be fair and equitable and should prioritize prevention and intervention rather than harsh punishments like suspension, expulsion, and referral to law enforcement. The goal of discipline should be to teach appropriate behaviors and minimize the time students spend out of class. In Spring 2015, the Center for Public Integrity released a study finding that Virginia led the country in schools referring students to law enforcement, a phenomenon known as the “school-to-prison pipeline.” Additional studies conducted by the Virginia Department of Education found that African American students and students with disabilities were disproportionately represented in both suspensions and referrals to law enforcement throughout Virginia schools. These disparities open up school districts to potential legal challenges for race and disability discrimination under federal civil rights laws. *See, e.g.*, Complaint against Richmond Public Schools, available at <https://acluva.org/en/cases/equal-treatment-richmond-public-school-students>. In order to avoid potential legal problems, and to provide a more equitable school environment, school officials should reevaluate and revise their current discipline policies and practices to create a more positive and preventative approach to student conduct. The Virginia Board of Education has provided a blueprint for schools to use in revising their outdated practices – the Model Guidance for Positive, Preventative Code of Student Conduct Policy and Alternatives to Suspension, available at http://www.doe.virginia.gov/support/student_conduct/index.shtml.

Due Process: The U.S. Constitution requires that students receive due process before disciplinary measures are imposed. This means that school officials must follow certain procedures before they can suspend or expel students from school. Students are generally entitled to receive notice prior to any suspension or expulsion. The notice must include the facts concerning the suspension or expulsion, and the basis for any accusations. The notice must also provide students an opportunity to explain their side. *See, e.g., Goss v. Lopez*, 419 U.S. 565 (1975). For Virginia’s specific procedural requirements, see Va. Code § 22.1-276.01 *et seq.*

Corporal Punishment: Corporal or physical punishment of students is strictly prohibited by Virginia law. *See* Va. Code § 22.1-279.1.

School Resource Officers: School Resource Officers (“SROs”) can protect students from outside danger, but often punish minor behaviors through ticketing and arrests. Law enforcement intervention should typically be a last resort for minor violations best handled by schools as discipline issues. For additional resources on how to limit disproportionate school-based arrests or referrals to law enforcement, visit the Model Guidance for Positive, Preventative Code of Student Conduct Policy and Alternatives to Suspension, available at http://www.doe.virginia.gov/support/student_conduct/index.shtml.



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RIGHTS OF STUDENTS WITH DISABILITIES

Students with disabilities are provided legal protections under several federal laws. The Individuals with Disabilities Education Act (“IDEA”) requires that public schools provide eligible students with disabilities a “free, appropriate public education” in the least restrictive environment. *See* 20 U.S.C. § 1400 *et seq.* As part of the IDEA, schools must affirmatively locate, identify, and evaluate children in their district for special education and related services, a process known as “child find.” Parents may also request an evaluation at any time in writing or by speaking to a teacher or administrator, and the school district must respond to the parent’s request. Schools must educate students with disabilities in the least restrictive setting possible, with an emphasis on inclusion and integration in the regular education classroom where feasible. Additionally, students receiving special education services under the IDEA, as well as students suspected of being eligible to receive services, are entitled to certain protections and safeguards in the school discipline process. *See* 34 C.F.R. § 300.530 *et seq.*

Students with disabilities are also provided with protections under Section 504 of the Rehabilitation Act of 1974 (“Section 504”) and Title II of the Americans with Disabilities Act (“ADA”). Section 504 and the ADA prohibit discrimination against students with disabilities. This means that schools are prohibited by federal law from denying students with disabilities equal access to academic courses, field trips, extracurricular activities, school technology, and health services. School officials also have a duty to ensure that students with disabilities are not being discriminated against by being denied necessary accommodations. Restricting access to educational activities and opportunities, ignoring harassment and bullying, and failing to train staff on compliance with these laws is also prohibited under Section 504 and the ADA. *See also* Va. Code § 22.1-213 *et seq.*

RIGHTS OF IMMIGRANT STUDENTS

Schools cannot discriminate against students on the basis of race, color, or national origin. This includes discriminating against students on the basis of their immigration status. Undocumented students have a right to a free public education in your school district regardless of their immigration status, and schools cannot deny students of this right. *See, e.g., Plyler v. Doe*, 457 U.S. 202 (1982). Likewise, schools are not permitted to deny enrollment to a student based on their undocumented status; treat a student differently to determine residency; make inquiries of students or parents that may expose their undocumented status; require social security numbers from parents or students for purposes of enrollment; or engage in any other practices which may chill the right of access to school. Schools cannot turn away students with limited English proficiency; they must be provided with language instruction. *See, e.g., Lau v. Nichols*, 414 U.S. 563 (1974).

School officials should not allow immigration enforcement actions on school grounds without a judicial warrant based on probable cause that a criminal violation of the immigration laws has occurred. Schools should not call immigration authorities on students or consent to any immigration enforcement on school grounds without a criminal warrant. There is no state law requiring any state or local official to contact immigration officials nor any state or federal law prohibiting adoption of a policy that protects students and teachers from immigration action in the absence of a judicial criminal warrant.

RIGHTS OF PREGNANT STUDENTS

Schools are prohibited from excluding pregnant students and students with children under Title IX of the Education Amendments of 1972. This means that schools must also ensure that pregnant students or students with children have access to educational instruction, school activities, and reasonable accommodations, to the same extent that students with temporary medical conditions are given access, including the ability to make up missed classwork and learn in a safe, nonjudgmental environment. Schools are also not allowed to punish students who choose to terminate a pregnancy or to reveal a student's private medical information.



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Dr. Walter Clemons
Gloucester County
6099 T.C. Walker Road
Gloucester, VA 23061

RE: Students' Rights Reminder for the 2019-2020 Academic Year

Dear Superintendent,

As our communities prepare for the new academic year and students head back to school, it is important to be aware of the key issues affecting Virginia's students and their rights. Being aware of students' rights under state and federal law can help school officials avoid any potential legal complications and contribute to a positive learning environment that will allow each student to thrive.



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RIGHTS OF STUDENTS WITH DISABILITIES

Students with disabilities are provided legal protections under several federal laws. The Individuals with Disabilities Education Act (“IDEA”) requires that public schools provide eligible students with disabilities a “free, appropriate public education” in the least restrictive environment. *See* 20 U.S.C. § 1400 *et seq.* As part of the IDEA, schools must affirmatively locate, identify, and evaluate children in their district for special education and related services, a process known as “child find.” Parents may also request an evaluation at any time in writing or by speaking to a teacher or administrator, and the school district must respond to the parent’s request. Schools must educate students with disabilities in the least restrictive setting possible, with an emphasis on inclusion and integration in the regular education classroom where feasible. Additionally, students receiving special education services under the IDEA, as well as students suspected of being eligible to receive services, are entitled to certain protections and safeguards in the school discipline process. *See* 34 C.F.R. § 300.530 *et seq.*

Students with disabilities are also provided with protections under Section 504 of the Rehabilitation Act of 1974 (“Section 504”) and Title II of the Americans with Disabilities Act (“ADA”). Section 504 and the ADA prohibit discrimination against students with disabilities. This means that schools are prohibited by federal law from denying students with disabilities equal access to academic courses, field trips, extracurricular activities, school technology, and health services. School officials also have a duty to ensure that students with disabilities are not being discriminated against by being denied necessary accommodations. Restricting access to educational activities and opportunities, ignoring harassment and bullying, and failing to train staff on compliance with these laws is also prohibited under Section 504 and the ADA. *See also* Va. Code § 22.1-213 *et seq.*

RIGHTS OF IMMIGRANT STUDENTS

Schools cannot discriminate against students on the basis of race, color, or national origin. This includes discriminating against students on the basis of their immigration status. Undocumented students have a right to a free public education in your school district regardless of their immigration status, and schools cannot deny students of this right. *See, e.g., Plyler v. Doe*, 457 U.S. 202 (1982). Likewise, schools are not permitted to deny enrollment to a student based on their undocumented status; treat a student differently to determine residency; make inquiries of students or parents that may expose their undocumented status; require social security numbers from parents or students for purposes of enrollment; or engage in any other practices which may chill the right of access to school. Schools cannot turn away students with limited English proficiency; they must be provided with language instruction. *See, e.g., Lau v. Nichols*, 414 U.S. 563 (1974).

School officials should not allow immigration enforcement actions on school grounds without a judicial warrant based on probable cause that a criminal violation of the immigration laws has occurred. Schools should not call immigration authorities on students or consent to any immigration enforcement on school grounds without a criminal warrant. There is no state law requiring any state or local official to contact immigration officials nor any state or federal law prohibiting adoption of a policy that protects students and teachers from immigration action in the absence of a judicial criminal warrant.

RIGHTS OF PREGNANT STUDENTS

Schools are prohibited from excluding pregnant students and students with children under Title IX of the Education Amendments of 1972. This means that schools must also ensure that pregnant students or students with children have access to educational instruction, school activities, and reasonable accommodations, to the same extent that students with temporary medical conditions are given access, including the ability to make up missed classwork and learn in a safe, nonjudgmental environment. Schools are also not allowed to punish students who choose to terminate a pregnancy or to reveal a student's private medical information.



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Dr. Jeremy J. Raley
Goochland County
PO Box 169
Goochland, VA 23063

RE: Students' Rights Reminder for the 2019-2020 Academic Year

Dear Superintendent,

As our communities prepare for the new academic year and students head back to school, it is important to be aware of the key issues affecting Virginia's students and their rights. Being aware of students' rights under state and federal law can help school officials avoid any potential legal complications and contribute to a positive learning environment that will allow each student to thrive.



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Federal and state laws afford children enrolled in school protection from discrimination and harassment based on race, color, religion, sex, national origin, or disability. Schools are responsible for ensuring these rights are protected and for promoting a safe school atmosphere. Additionally, schools are responsible for ensuring that students' right to free speech is respected and that the freedom to practice their religion—or no religion at all— is upheld.

Summarized below you will find information regarding: student speech rights; the Pledge of Allegiance; censorship; religious beliefs and accommodations; the rights of students who identify as LGBTQ; discipline and arrests; the rights of students with disabilities; the rights of students who are immigrants; and the rights of students who are pregnant.

We hope this information will help your school district understand the rights of students in schools and guide you in taking actions that ensure student rights are protected in a safe and supportive environment. Please do not hesitate to contact the ACLU of Virginia if you have any questions about these issues or if we can be of any assistance to you in evaluating and formulating school policy on any of these matters. We can be reached at (804) 644-8022 or acluva@acluva.org.

Very truly yours,

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Claire G. Gastañaga
Executive Director



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STUDENT SPEECH RIGHTS

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It is true that the constitutional rights of students in public school are not the same as those of adults exercising First Amendment rights on public streets. Students' speech rights may be limited by reasonable time, place, and manner restrictions because of the unique characteristics of the school environment. A school may limit student speech, for example, through reasonable school-wide policies against cyberbullying. Additionally, schools may prohibit vulgar or offensive speech that is inconsistent with the "fundamental values of public school education." *Bethel Sch. Dist. No. 43 v. Fraser*, 478 U.S. 675, 685-86 (1986).

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Establishment Clause: Under the First Amendment’s Establishment Clause, school officials cannot favor one religion over another or favor religion over nonbelief. In practice, this means that school officials and teachers cannot conduct prayer or bible-reading sessions, organize or participate in student-led prayer, or hold a prayer at graduation or sporting events, even when participation is voluntary. *See, e.g., Abington Sch. Dist. v. Schempp*, 374 U.S. 203 (1963); *Engel v. Vitale*, 370 U.S. 421 (1962); *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 308 (2000); *Lee v. Weisman*, 505 U.S. 577 (1992). Teachers cannot lead students in devotional activities or encourage student participation in religious activity before or after school, during class, or at school-sponsored activities. In fact, in the public-school context, the Supreme Court has invalidated almost every instance of school- or teacher-sponsored religious expression. Under Virginia law, school boards are permitted to establish a daily observance of one minute of silence, but the school board must be careful to ensure that its policy has secular justifications and is not merely a pretense to encourage prayer. *See, e.g., Va. Code § 22.1-203; VIRGINIA STATE BOARD OF EDUCATION, GUIDELINES CONCERNING RELIGIOUS ACTIVITY IN THE PUBLIC SCHOOLS* (1995).

RIGHTS OF LGBTQ STUDENTS

Cultivating a Safe Environment: Bullying of lesbian, gay, bisexual, transgender, and queer (“LGBTQ”) students has been documented as pervasive at many schools and is all too often ignored, or even encouraged, by school officials. LGBTQ students have a right to live their authentic lives and express themselves at school. Students have a right to be out of the closet at school, and conversely, public schools are not allowed to “out” students publicly. School officials and administrators must ensure they are creating a safe learning environment and protecting LGBTQ students from bullying and harassment. *See, e.g., Title IX, 20 U.S.C. § 1681* (schools may be liable if they act with deliberate indifference in failing to protect students from severe harassment on the basis of sex).



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Discipline: The intimate relationships of LGBTQ students must be treated with equal dignity as those of heterosexual students. Policies that prohibit same-sex couples or dates from attending prom, homecoming, or other dance functions violates students’ rights under Title IX of the Education Amendments of 1972, the Equal Protection Clause of the U.S. Constitution, and the Bill of Rights of the Virginia Constitution. LGBTQ students should not be punished more severely than heterosexual students for similar behavior, including for displays of affection.

LGBTQ Student Organizations: Students interested in forming a student organization, typically called a gay-straight alliance (“GSA”), are to be treated the same as students forming any other noncurricular organization or club. *See, e.g., 20 U.S.C. § 4071(a)* (if a school allows any noncurricular student group to meet, it cannot deny other groups the same access based on the content of their interest); *Gay All. of Students v. Matthews*, 544 F.2d 162 (4th Cir. 1976).

Gender Markers, Pronouns, and Student Records: Students should be addressed using their preferred names and pronouns. Refusing to do so, or refusing to update the gender markers on a student’s records when provided with appropriate documentation, may be considered a form of sex-based discrimination under federal law. *See Grimm v. Gloucester County Sch. Bd.*, Civil No. 4:15-cv-52, 2019 U.S. Dist. Lexis 138246 (E.D. Va. Aug. 9, 2019). Likewise, a student’s right to privacy includes a student’s sexual orientation or gender identity. It is against the law for school officials to disclose or compel students to disclose this information, even if the student appears open about their sexual orientation or gender identity. *See C.N. v. Wolf*, 410 F. Supp. 2d 894, 903 (C.D. Cal. 2005).



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DISCIPLINE AND ARRESTS

Generally: School discipline policies and practices should be fair and equitable and should prioritize prevention and intervention rather than harsh punishments like suspension, expulsion, and referral to law enforcement. The goal of discipline should be to teach appropriate behaviors and minimize the time students spend out of class. In Spring 2015, the Center for Public Integrity released a study finding that Virginia led the country in schools referring students to law enforcement, a phenomenon known as the “school-to-prison pipeline.” Additional studies conducted by the Virginia Department of Education found that African American students and students with disabilities were disproportionately represented in both suspensions and referrals to law enforcement throughout Virginia schools. These disparities open up school districts to potential legal challenges for race and disability discrimination under federal civil rights laws. *See, e.g.,* Complaint against Richmond Public Schools, available at <https://acluva.org/en/cases/equal-treatment-richmond-public-school-students>. In order to avoid potential legal problems, and to provide a more equitable school environment, school officials should reevaluate and revise their current discipline policies and practices to create a more positive and preventative approach to student conduct. The Virginia Board of Education has provided a blueprint for schools to use in revising their outdated practices – the Model Guidance for Positive, Preventative Code of Student Conduct Policy and Alternatives to Suspension, available at http://www.doe.virginia.gov/support/student_conduct/index.shtml.

Due Process: The U.S. Constitution requires that students receive due process before disciplinary measures are imposed. This means that school officials must follow certain procedures before they can suspend or expel students from school. Students are generally entitled to receive notice prior to any suspension or expulsion. The notice must include the facts concerning the suspension or expulsion, and the basis for any accusations. The notice must also provide students an opportunity to explain their side. *See, e.g., Goss v. Lopez*, 419 U.S. 565 (1975). For Virginia’s specific procedural requirements, see Va. Code § 22.1-276.01 *et seq.*

Corporal Punishment: Corporal or physical punishment of students is strictly prohibited by Virginia law. *See* Va. Code § 22.1-279.1.

School Resource Officers: School Resource Officers (“SROs”) can protect students from outside danger, but often punish minor behaviors through ticketing and arrests. Law enforcement intervention should typically be a last resort for minor violations best handled by schools as discipline issues. For additional resources on how to limit disproportionate school-based arrests or referrals to law enforcement, visit the Model Guidance for Positive, Preventative Code of Student Conduct Policy and Alternatives to Suspension, available at http://www.doe.virginia.gov/support/student_conduct/index.shtml.



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RIGHTS OF PREGNANT STUDENTS

Schools are prohibited from excluding pregnant students and students with children under Title IX of the Education Amendments of 1972. This means that schools must also ensure that pregnant students or students with children have access to educational instruction, school activities, and reasonable accommodations, to the same extent that students with temporary medical conditions are given access, including the ability to make up missed classwork and learn in a safe, nonjudgmental environment. Schools are also not allowed to punish students who choose to terminate a pregnancy or to reveal a student's private medical information.



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Mr. Kelly Wilmore
Grayson County
PO Box 888
Independence, VA 24348

RE: Students' Rights Reminder for the 2019-2020 Academic Year

Dear Superintendent,

As our communities prepare for the new academic year and students head back to school, it is important to be aware of the key issues affecting Virginia's students and their rights. Being aware of students' rights under state and federal law can help school officials avoid any potential legal complications and contribute to a positive learning environment that will allow each student to thrive.



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Gender Markers, Pronouns, and Student Records: Students should be addressed using their preferred names and pronouns. Refusing to do so, or refusing to update the gender markers on a student’s records when provided with appropriate documentation, may be considered a form of sex-based discrimination under federal law. *See Grimm v. Gloucester County Sch. Bd.*, Civil No. 4:15-cv-52, 2019 U.S. Dist. Lexis 138246 (E.D. Va. Aug. 9, 2019). Likewise, a student’s right to privacy includes a student’s sexual orientation or gender identity. It is against the law for school officials to disclose or compel students to disclose this information, even if the student appears open about their sexual orientation or gender identity. *See C.N. v. Wolf*, 410 F. Supp. 2d 894, 903 (C.D. Cal. 2005).



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DISCIPLINE AND ARRESTS

Generally: School discipline policies and practices should be fair and equitable and should prioritize prevention and intervention rather than harsh punishments like suspension, expulsion, and referral to law enforcement. The goal of discipline should be to teach appropriate behaviors and minimize the time students spend out of class. In Spring 2015, the Center for Public Integrity released a study finding that Virginia led the country in schools referring students to law enforcement, a phenomenon known as the “school-to-prison pipeline.” Additional studies conducted by the Virginia Department of Education found that African American students and students with disabilities were disproportionately represented in both suspensions and referrals to law enforcement throughout Virginia schools. These disparities open up school districts to potential legal challenges for race and disability discrimination under federal civil rights laws. *See, e.g.*, Complaint against Richmond Public Schools, available at <https://acluva.org/en/cases/equal-treatment-richmond-public-school-students>. In order to avoid potential legal problems, and to provide a more equitable school environment, school officials should reevaluate and revise their current discipline policies and practices to create a more positive and preventative approach to student conduct. The Virginia Board of Education has provided a blueprint for schools to use in revising their outdated practices – the Model Guidance for Positive, Preventative Code of Student Conduct Policy and Alternatives to Suspension, available at http://www.doe.virginia.gov/support/student_conduct/index.shtml.

Due Process: The U.S. Constitution requires that students receive due process before disciplinary measures are imposed. This means that school officials must follow certain procedures before they can suspend or expel students from school. Students are generally entitled to receive notice prior to any suspension or expulsion. The notice must include the facts concerning the suspension or expulsion, and the basis for any accusations. The notice must also provide students an opportunity to explain their side. *See, e.g., Goss v. Lopez*, 419 U.S. 565 (1975). For Virginia’s specific procedural requirements, see Va. Code § 22.1-276.01 *et seq.*

Corporal Punishment: Corporal or physical punishment of students is strictly prohibited by Virginia law. *See* Va. Code § 22.1-279.1.

School Resource Officers: School Resource Officers (“SROs”) can protect students from outside danger, but often punish minor behaviors through ticketing and arrests. Law enforcement intervention should typically be a last resort for minor violations best handled by schools as discipline issues. For additional resources on how to limit disproportionate school-based arrests or referrals to law enforcement, visit the Model Guidance for Positive, Preventative Code of Student Conduct Policy and Alternatives to Suspension, available at http://www.doe.virginia.gov/support/student_conduct/index.shtml.



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RIGHTS OF STUDENTS WITH DISABILITIES

Students with disabilities are provided legal protections under several federal laws. The Individuals with Disabilities Education Act (“IDEA”) requires that public schools provide eligible students with disabilities a “free, appropriate public education” in the least restrictive environment. *See* 20 U.S.C. § 1400 *et seq.* As part of the IDEA, schools must affirmatively locate, identify, and evaluate children in their district for special education and related services, a process known as “child find.” Parents may also request an evaluation at any time in writing or by speaking to a teacher or administrator, and the school district must respond to the parent’s request. Schools must educate students with disabilities in the least restrictive setting possible, with an emphasis on inclusion and integration in the regular education classroom where feasible. Additionally, students receiving special education services under the IDEA, as well as students suspected of being eligible to receive services, are entitled to certain protections and safeguards in the school discipline process. *See* 34 C.F.R. § 300.530 *et seq.*

Students with disabilities are also provided with protections under Section 504 of the Rehabilitation Act of 1974 (“Section 504”) and Title II of the Americans with Disabilities Act (“ADA”). Section 504 and the ADA prohibit discrimination against students with disabilities. This means that schools are prohibited by federal law from denying students with disabilities equal access to academic courses, field trips, extracurricular activities, school technology, and health services. School officials also have a duty to ensure that students with disabilities are not being discriminated against by being denied necessary accommodations. Restricting access to educational activities and opportunities, ignoring harassment and bullying, and failing to train staff on compliance with these laws is also prohibited under Section 504 and the ADA. *See also* Va. Code § 22.1-213 *et seq.*

RIGHTS OF IMMIGRANT STUDENTS

Schools cannot discriminate against students on the basis of race, color, or national origin. This includes discriminating against students on the basis of their immigration status. Undocumented students have a right to a free public education in your school district regardless of their immigration status, and schools cannot deny students of this right. *See, e.g., Plyler v. Doe*, 457 U.S. 202 (1982). Likewise, schools are not permitted to deny enrollment to a student based on their undocumented status; treat a student differently to determine residency; make inquiries of students or parents that may expose their undocumented status; require social security numbers from parents or students for purposes of enrollment; or engage in any other practices which may chill the right of access to school. Schools cannot turn away students with limited English proficiency; they must be provided with language instruction. *See, e.g., Lau v. Nichols*, 414 U.S. 563 (1974).

School officials should not allow immigration enforcement actions on school grounds without a judicial warrant based on probable cause that a criminal violation of the immigration laws has occurred. Schools should not call immigration authorities on students or consent to any immigration enforcement on school grounds without a criminal warrant. There is no state law requiring any state or local official to contact immigration officials nor any state or federal law prohibiting adoption of a policy that protects students and teachers from immigration action in the absence of a judicial criminal warrant.

RIGHTS OF PREGNANT STUDENTS

Schools are prohibited from excluding pregnant students and students with children under Title IX of the Education Amendments of 1972. This means that schools must also ensure that pregnant students or students with children have access to educational instruction, school activities, and reasonable accommodations, to the same extent that students with temporary medical conditions are given access, including the ability to make up missed classwork and learn in a safe, nonjudgmental environment. Schools are also not allowed to punish students who choose to terminate a pregnancy or to reveal a student's private medical information.



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Dr. Andrea Whitmarsh
Greene County
P.O. Box 1140
Stanardsville, VA 22973

RE: Students' Rights Reminder for the 2019-2020 Academic Year

Dear Superintendent,

As our communities prepare for the new academic year and students head back to school, it is important to be aware of the key issues affecting Virginia's students and their rights. Being aware of students' rights under state and federal law can help school officials avoid any potential legal complications and contribute to a positive learning environment that will allow each student to thrive.



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Federal and state laws afford children enrolled in school protection from discrimination and harassment based on race, color, religion, sex, national origin, or disability. Schools are responsible for ensuring these rights are protected and for promoting a safe school atmosphere. Additionally, schools are responsible for ensuring that students' right to free speech is respected and that the freedom to practice their religion—or no religion at all— is upheld.

Summarized below you will find information regarding: student speech rights; the Pledge of Allegiance; censorship; religious beliefs and accommodations; the rights of students who identify as LGBTQ; discipline and arrests; the rights of students with disabilities; the rights of students who are immigrants; and the rights of students who are pregnant.

We hope this information will help your school district understand the rights of students in schools and guide you in taking actions that ensure student rights are protected in a safe and supportive environment. Please do not hesitate to contact the ACLU of Virginia if you have any questions about these issues or if we can be of any assistance to you in evaluating and formulating school policy on any of these matters. We can be reached at (804) 644-8022 or acluva@acluva.org.

Very truly yours,

A handwritten signature in blue ink, which appears to read "Claire G. Gastañaga".

Claire G. Gastañaga
Executive Director



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STUDENT SPEECH RIGHTS

The First Amendment ensures that students cannot be punished for exercising free speech rights, even if administrators do not approve of their message. In the landmark Supreme Court case *Tinker v. Des Moines Independent Community School District*, the ACLU successfully challenged a school district's decision to suspend three students for wearing armbands in protest of the Vietnam War. 393 U.S. 503 (1969). The court declared that students and teachers do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." *Id.* at 506. Over the years, the ACLU has also successfully defended the right of students to wear an anti-abortion armband, a pro-LGBTQ t-shirt, and shirts critical of political figures. Schools may not discipline students for expressing an idea or political viewpoint in class or during school activities, as long as it does not cause a substantial disruption to the school environment.

It is true that the constitutional rights of students in public school are not the same as those of adults exercising First Amendment rights on public streets. Students' speech rights may be limited by reasonable time, place, and manner restrictions because of the unique characteristics of the school environment. A school may limit student speech, for example, through reasonable school-wide policies against cyberbullying. Additionally, schools may prohibit vulgar or offensive speech that is inconsistent with the "fundamental values of public school education." *Bethel Sch. Dist. No. 43 v. Fraser*, 478 U.S. 675, 685-86 (1986).

School officials should take care, however, not to define peaceful assembly as behavior that causes a substantial disruption to school activities. If students engage in a walkout, school officials may choose to discipline students for missing class but may not engage in harsher punishment because of the message or political nature of the action. School officials must not draw distinctions based on the content of a student's speech or expressive activity in imposing discipline.

PLEDGE OF ALLEGIANCE

Schools cannot punish students for refusing to salute the flag or say the Pledge of Allegiance. *W.Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624 (1943); *Sherman v. Comm. Consol. Sch. Dist. 21*, 980 F.2d 437 (7th Cir. 1992). School officials also cannot force students to stand during the Pledge of Allegiance or leave the room if a student refuses to recite the Pledge. *See* Va. Code § 22.1-202(C) ("[N]o student shall be compelled to recite the Pledge if he, his parent or legal guardian objects on religious, philosophical or other grounds to his participating in this exercise.")

CENSORSHIP

Books: Banning books, removing books and materials from a classroom or library, or otherwise making it difficult for students to read a broad array of literature limits intellectual freedom. Making books and ideas unavailable based on their content or viewpoint or taking books out of schools because they are controversial, unpopular, or offensive, may violate the First Amendment. *See, e.g., Bd. of Educ. v. Pico*, 457 U.S. 853 (1982). Courts view school libraries as the main place where students exercise their freedom "to inquire, to study and to evaluate, to gain new maturity and understanding." *Id.* at 868.

Student Publications: Schools may review and control the content of school sponsored student publications including student newspapers, yearbooks, literary magazines, on-campus videos, and radio broadcasts. But schools cannot control student publications that are not sponsored or funded by the school, not done as part of a class or school project, or that are done on a student’s own time with their own resources. *See, e.g., Burt v. Barker*, 861 F.2d 1149 (9th Cir. 1988); *Fujishima v. Bd. of Ed.*, 160 F.2d 1355 (7th Cir. 1972); *Eisner v. Stanford Bd. of Ed.*, 440 F.2d 803 (2d Cir. 1971).

RELIGIOUS BELIEFS AND ACCOMMODATIONS

Free Exercise Clause: Under the First Amendment’s Free Exercise Clause, students have the right to worship as they see fit, with only limited restrictions. This means that while at school, students are free to practice their religion or nonreligion and to express themselves religiously without interference by school officials. Students may, for example, wear religious attire or clothing with religious messaging to school; post religious messages or images on their lockers; or bring religious materials, including religious texts or objects, to school. School officials may not, for instance, require students to remove their hijab, yarmulke, or other head covering, as it substantially burdens the practice of the student’s religion. *See, e.g., Va. Code § 22.1-203.1 et seq.; VIRGINIA STATE BOARD OF EDUCATION, GUIDELINES CONCERNING RELIGIOUS ACTIVITY IN THE PUBLIC SCHOOLS* (1995).

Establishment Clause: Under the First Amendment’s Establishment Clause, school officials cannot favor one religion over another or favor religion over nonbelief. In practice, this means that school officials and teachers cannot conduct prayer or bible-reading sessions, organize or participate in student-led prayer, or hold a prayer at graduation or sporting events, even when participation is voluntary. *See, e.g., Abington Sch. Dist. v. Schempp*, 374 U.S. 203 (1963); *Engel v. Vitale*, 370 U.S. 421 (1962); *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 308 (2000); *Lee v. Weisman*, 505 U.S. 577 (1992). Teachers cannot lead students in devotional activities or encourage student participation in religious activity before or after school, during class, or at school-sponsored activities. In fact, in the public-school context, the Supreme Court has invalidated almost every instance of school- or teacher-sponsored religious expression. Under Virginia law, school boards are permitted to establish a daily observance of one minute of silence, but the school board must be careful to ensure that its policy has secular justifications and is not merely a pretense to encourage prayer. *See, e.g., Va. Code § 22.1-203; VIRGINIA STATE BOARD OF EDUCATION, GUIDELINES CONCERNING RELIGIOUS ACTIVITY IN THE PUBLIC SCHOOLS* (1995).

RIGHTS OF LGBTQ STUDENTS

Cultivating a Safe Environment: Bullying of lesbian, gay, bisexual, transgender, and queer (“LGBTQ”) students has been documented as pervasive at many schools and is all too often ignored, or even encouraged, by school officials. LGBTQ students have a right to live their authentic lives and express themselves at school. Students have a right to be out of the closet at school, and conversely, public schools are not allowed to “out” students publicly. School officials and administrators must ensure they are creating a safe learning environment and protecting LGBTQ students from bullying and harassment. *See, e.g., Title IX, 20 U.S.C. § 1681* (schools may be liable if they act with deliberate indifference in failing to protect students from severe harassment on the basis of sex).



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Restrooms & Locker Rooms: Transgender students must be allowed to use the restroom facilities consistent with their gender identity. Schools cannot create policies that require transgender students to use restrooms or locker rooms that do not correspond with their gender identity, and schools may not create policies that require transgender students to use single-user facilities. *See Grimm v. Gloucester County Sch. Bd.*, Civil No. 4:15-cv-52, 2019 U.S. Dist. Lexis 138246 (E.D. Va. Aug. 9, 2019).

Dress Code: School officials cannot force students to wear clothing inconsistent with their gender identity. Public schools may have dress codes, but dress codes cannot treat students differently based on their gender, force students to conform to sex stereotypes, or censor particular viewpoints. Schools cannot enact dress codes based on the stereotype that only girls can wear some types of clothes and only boys wear other types of clothes. *See, e.g., U.S. v. Virginia*, 518 U.S. 515, 533 (1996) (government actors must not treat male and female students differently because of “overbroad generalizations about the different talents, capacities, or preferences of males and females.”). Schools may, for example, require that skirts be a certain length; however, they cannot require that some students wear skirts and prohibit others from doing so based on the student’s sex or gender expression. This also applies to pants, ties, or other clothing associated with traditional gender roles. And it applies to attire requirements for homecoming, prom, graduation, and other special school events.

Discipline: The intimate relationships of LGBTQ students must be treated with equal dignity as those of heterosexual students. Policies that prohibit same-sex couples or dates from attending prom, homecoming, or other dance functions violates students’ rights under Title IX of the Education Amendments of 1972, the Equal Protection Clause of the U.S. Constitution, and the Bill of Rights of the Virginia Constitution. LGBTQ students should not be punished more severely than heterosexual students for similar behavior, including for displays of affection.

LGBTQ Student Organizations: Students interested in forming a student organization, typically called a gay-straight alliance (“GSA”), are to be treated the same as students forming any other noncurricular organization or club. *See, e.g., 20 U.S.C. § 4071(a)* (if a school allows any noncurricular student group to meet, it cannot deny other groups the same access based on the content of their interest); *Gay All. of Students v. Matthews*, 544 F.2d 162 (4th Cir. 1976).

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Generally: School discipline policies and practices should be fair and equitable and should prioritize prevention and intervention rather than harsh punishments like suspension, expulsion, and referral to law enforcement. The goal of discipline should be to teach appropriate behaviors and minimize the time students spend out of class. In Spring 2015, the Center for Public Integrity released a study finding that Virginia led the country in schools referring students to law enforcement, a phenomenon known as the “school-to-prison pipeline.” Additional studies conducted by the Virginia Department of Education found that African American students and students with disabilities were disproportionately represented in both suspensions and referrals to law enforcement throughout Virginia schools. These disparities open up school districts to potential legal challenges for race and disability discrimination under federal civil rights laws. *See, e.g.*, Complaint against Richmond Public Schools, available at <https://acluva.org/en/cases/equal-treatment-richmond-public-school-students>. In order to avoid potential legal problems, and to provide a more equitable school environment, school officials should reevaluate and revise their current discipline policies and practices to create a more positive and preventative approach to student conduct. The Virginia Board of Education has provided a blueprint for schools to use in revising their outdated practices – the Model Guidance for Positive, Preventative Code of Student Conduct Policy and Alternatives to Suspension, available at http://www.doe.virginia.gov/support/student_conduct/index.shtml.

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RIGHTS OF STUDENTS WITH DISABILITIES

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RIGHTS OF IMMIGRANT STUDENTS

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RIGHTS OF PREGNANT STUDENTS

Schools are prohibited from excluding pregnant students and students with children under Title IX of the Education Amendments of 1972. This means that schools must also ensure that pregnant students or students with children have access to educational instruction, school activities, and reasonable accommodations, to the same extent that students with temporary medical conditions are given access, including the ability to make up missed classwork and learn in a safe, nonjudgmental environment. Schools are also not allowed to punish students who choose to terminate a pregnancy or to reveal a student's private medical information.



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Dr. Kim F. Evans
Greensville County
105 Ruffin Street
Emporia, VA 23847

RE: Students' Rights Reminder for the 2019-2020 Academic Year

Dear Superintendent,

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Very truly yours,

A handwritten signature in blue ink, which appears to read "Claire G. Gastañaga". The signature is fluid and cursive.

Claire G. Gastañaga
Executive Director



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STUDENT SPEECH RIGHTS

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Establishment Clause: Under the First Amendment’s Establishment Clause, school officials cannot favor one religion over another or favor religion over nonbelief. In practice, this means that school officials and teachers cannot conduct prayer or bible-reading sessions, organize or participate in student-led prayer, or hold a prayer at graduation or sporting events, even when participation is voluntary. *See, e.g., Abington Sch. Dist. v. Schempp*, 374 U.S. 203 (1963); *Engel v. Vitale*, 370 U.S. 421 (1962); *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 308 (2000); *Lee v. Weisman*, 505 U.S. 577 (1992). Teachers cannot lead students in devotional activities or encourage student participation in religious activity before or after school, during class, or at school-sponsored activities. In fact, in the public-school context, the Supreme Court has invalidated almost every instance of school- or teacher-sponsored religious expression. Under Virginia law, school boards are permitted to establish a daily observance of one minute of silence, but the school board must be careful to ensure that its policy has secular justifications and is not merely a pretense to encourage prayer. *See, e.g., Va. Code § 22.1-203; VIRGINIA STATE BOARD OF EDUCATION, GUIDELINES CONCERNING RELIGIOUS ACTIVITY IN THE PUBLIC SCHOOLS* (1995).

RIGHTS OF LGBTQ STUDENTS

Cultivating a Safe Environment: Bullying of lesbian, gay, bisexual, transgender, and queer (“LGBTQ”) students has been documented as pervasive at many schools and is all too often ignored, or even encouraged, by school officials. LGBTQ students have a right to live their authentic lives and express themselves at school. Students have a right to be out of the closet at school, and conversely, public schools are not allowed to “out” students publicly. School officials and administrators must ensure they are creating a safe learning environment and protecting LGBTQ students from bullying and harassment. *See, e.g., Title IX, 20 U.S.C. § 1681* (schools may be liable if they act with deliberate indifference in failing to protect students from severe harassment on the basis of sex).



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Gender Markers, Pronouns, and Student Records: Students should be addressed using their preferred names and pronouns. Refusing to do so, or refusing to update the gender markers on a student’s records when provided with appropriate documentation, may be considered a form of sex-based discrimination under federal law. *See Grimm v. Gloucester County Sch. Bd.*, Civil No. 4:15-cv-52, 2019 U.S. Dist. Lexis 138246 (E.D. Va. Aug. 9, 2019). Likewise, a student’s right to privacy includes a student’s sexual orientation or gender identity. It is against the law for school officials to disclose or compel students to disclose this information, even if the student appears open about their sexual orientation or gender identity. *See C.N. v. Wolf*, 410 F. Supp. 2d 894, 903 (C.D. Cal. 2005).



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DISCIPLINE AND ARRESTS

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Corporal Punishment: Corporal or physical punishment of students is strictly prohibited by Virginia law. *See* Va. Code § 22.1-279.1.

School Resource Officers: School Resource Officers (“SROs”) can protect students from outside danger, but often punish minor behaviors through ticketing and arrests. Law enforcement intervention should typically be a last resort for minor violations best handled by schools as discipline issues. For additional resources on how to limit disproportionate school-based arrests or referrals to law enforcement, visit the Model Guidance for Positive, Preventative Code of Student Conduct Policy and Alternatives to Suspension, available at http://www.doe.virginia.gov/support/student_conduct/index.shtml.



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RIGHTS OF STUDENTS WITH DISABILITIES

Students with disabilities are provided legal protections under several federal laws. The Individuals with Disabilities Education Act (“IDEA”) requires that public schools provide eligible students with disabilities a “free, appropriate public education” in the least restrictive environment. *See* 20 U.S.C. § 1400 *et seq.* As part of the IDEA, schools must affirmatively locate, identify, and evaluate children in their district for special education and related services, a process known as “child find.” Parents may also request an evaluation at any time in writing or by speaking to a teacher or administrator, and the school district must respond to the parent’s request. Schools must educate students with disabilities in the least restrictive setting possible, with an emphasis on inclusion and integration in the regular education classroom where feasible. Additionally, students receiving special education services under the IDEA, as well as students suspected of being eligible to receive services, are entitled to certain protections and safeguards in the school discipline process. *See* 34 C.F.R. § 300.530 *et seq.*

Students with disabilities are also provided with protections under Section 504 of the Rehabilitation Act of 1974 (“Section 504”) and Title II of the Americans with Disabilities Act (“ADA”). Section 504 and the ADA prohibit discrimination against students with disabilities. This means that schools are prohibited by federal law from denying students with disabilities equal access to academic courses, field trips, extracurricular activities, school technology, and health services. School officials also have a duty to ensure that students with disabilities are not being discriminated against by being denied necessary accommodations. Restricting access to educational activities and opportunities, ignoring harassment and bullying, and failing to train staff on compliance with these laws is also prohibited under Section 504 and the ADA. *See also* Va. Code § 22.1-213 *et seq.*

RIGHTS OF IMMIGRANT STUDENTS

Schools cannot discriminate against students on the basis of race, color, or national origin. This includes discriminating against students on the basis of their immigration status. Undocumented students have a right to a free public education in your school district regardless of their immigration status, and schools cannot deny students of this right. *See, e.g., Plyler v. Doe*, 457 U.S. 202 (1982). Likewise, schools are not permitted to deny enrollment to a student based on their undocumented status; treat a student differently to determine residency; make inquiries of students or parents that may expose their undocumented status; require social security numbers from parents or students for purposes of enrollment; or engage in any other practices which may chill the right of access to school. Schools cannot turn away students with limited English proficiency; they must be provided with language instruction. *See, e.g., Lau v. Nichols*, 414 U.S. 563 (1974).

School officials should not allow immigration enforcement actions on school grounds without a judicial warrant based on probable cause that a criminal violation of the immigration laws has occurred. Schools should not call immigration authorities on students or consent to any immigration enforcement on school grounds without a criminal warrant. There is no state law requiring any state or local official to contact immigration officials nor any state or federal law prohibiting adoption of a policy that protects students and teachers from immigration action in the absence of a judicial criminal warrant.

RIGHTS OF PREGNANT STUDENTS

Schools are prohibited from excluding pregnant students and students with children under Title IX of the Education Amendments of 1972. This means that schools must also ensure that pregnant students or students with children have access to educational instruction, school activities, and reasonable accommodations, to the same extent that students with temporary medical conditions are given access, including the ability to make up missed classwork and learn in a safe, nonjudgmental environment. Schools are also not allowed to punish students who choose to terminate a pregnancy or to reveal a student's private medical information.



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Dr. Mark Y. Lineburg
Halifax County
PO Box 1849
Halifax, VA 24558

RE: Students' Rights Reminder for the 2019-2020 Academic Year

Dear Superintendent,

As our communities prepare for the new academic year and students head back to school, it is important to be aware of the key issues affecting Virginia's students and their rights. Being aware of students' rights under state and federal law can help school officials avoid any potential legal complications and contribute to a positive learning environment that will allow each student to thrive.



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Federal and state laws afford children enrolled in school protection from discrimination and harassment based on race, color, religion, sex, national origin, or disability. Schools are responsible for ensuring these rights are protected and for promoting a safe school atmosphere. Additionally, schools are responsible for ensuring that students' right to free speech is respected and that the freedom to practice their religion—or no religion at all— is upheld.

Summarized below you will find information regarding: student speech rights; the Pledge of Allegiance; censorship; religious beliefs and accommodations; the rights of students who identify as LGBTQ; discipline and arrests; the rights of students with disabilities; the rights of students who are immigrants; and the rights of students who are pregnant.

We hope this information will help your school district understand the rights of students in schools and guide you in taking actions that ensure student rights are protected in a safe and supportive environment. Please do not hesitate to contact the ACLU of Virginia if you have any questions about these issues or if we can be of any assistance to you in evaluating and formulating school policy on any of these matters. We can be reached at (804) 644-8022 or acluva@acluva.org.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Claire G. Gastañaga". The signature is fluid and cursive.

Claire G. Gastañaga
Executive Director



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STUDENT SPEECH RIGHTS

The First Amendment ensures that students cannot be punished for exercising free speech rights, even if administrators do not approve of their message. In the landmark Supreme Court case *Tinker v. Des Moines Independent Community School District*, the ACLU successfully challenged a school district's decision to suspend three students for wearing armbands in protest of the Vietnam War. 393 U.S. 503 (1969). The court declared that students and teachers do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." *Id.* at 506. Over the years, the ACLU has also successfully defended the right of students to wear an anti-abortion armband, a pro-LGBTQ t-shirt, and shirts critical of political figures. Schools may not discipline students for expressing an idea or political viewpoint in class or during school activities, as long as it does not cause a substantial disruption to the school environment.

It is true that the constitutional rights of students in public school are not the same as those of adults exercising First Amendment rights on public streets. Students' speech rights may be limited by reasonable time, place, and manner restrictions because of the unique characteristics of the school environment. A school may limit student speech, for example, through reasonable school-wide policies against cyberbullying. Additionally, schools may prohibit vulgar or offensive speech that is inconsistent with the "fundamental values of public school education." *Bethel Sch. Dist. No. 43 v. Fraser*, 478 U.S. 675, 685-86 (1986).

School officials should take care, however, not to define peaceful assembly as behavior that causes a substantial disruption to school activities. If students engage in a walkout, school officials may choose to discipline students for missing class but may not engage in harsher punishment because of the message or political nature of the action. School officials must not draw distinctions based on the content of a student's speech or expressive activity in imposing discipline.

PLEDGE OF ALLEGIANCE

Schools cannot punish students for refusing to salute the flag or say the Pledge of Allegiance. *W.Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624 (1943); *Sherman v. Comm. Consol. Sch. Dist. 21*, 980 F.2d 437 (7th Cir. 1992). School officials also cannot force students to stand during the Pledge of Allegiance or leave the room if a student refuses to recite the Pledge. *See* Va. Code § 22.1-202(C) ("[N]o student shall be compelled to recite the Pledge if he, his parent or legal guardian objects on religious, philosophical or other grounds to his participating in this exercise.")

CENSORSHIP

Books: Banning books, removing books and materials from a classroom or library, or otherwise making it difficult for students to read a broad array of literature limits intellectual freedom. Making books and ideas unavailable based on their content or viewpoint or taking books out of schools because they are controversial, unpopular, or offensive, may violate the First Amendment. *See, e.g., Bd. of Educ. v. Pico*, 457 U.S. 853 (1982). Courts view school libraries as the main place where students exercise their freedom "to inquire, to study and to evaluate, to gain new maturity and understanding." *Id.* at 868.

Student Publications: Schools may review and control the content of school sponsored student publications including student newspapers, yearbooks, literary magazines, on-campus videos, and radio broadcasts. But schools cannot control student publications that are not sponsored or funded by the school, not done as part of a class or school project, or that are done on a student’s own time with their own resources. *See, e.g., Burt v. Barker*, 861 F.2d 1149 (9th Cir. 1988); *Fujishima v. Bd. of Ed.*, 160 F.2d 1355 (7th Cir. 1972); *Eisner v. Stanford Bd. of Ed.*, 440 F.2d 803 (2d Cir. 1971).

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DISCIPLINE AND ARRESTS

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RIGHTS OF PREGNANT STUDENTS

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Dr. Jeffery O. Smith
Hampton
1 Franklin Street
Hampton, VA 23669

RE: Students' Rights Reminder for the 2019-2020 Academic Year

Dear Superintendent,

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Very truly yours,



Claire G. Gastañaga
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STUDENT SPEECH RIGHTS

The First Amendment ensures that students cannot be punished for exercising free speech rights, even if administrators do not approve of their message. In the landmark Supreme Court case *Tinker v. Des Moines Independent Community School District*, the ACLU successfully challenged a school district's decision to suspend three students for wearing armbands in protest of the Vietnam War. 393 U.S. 503 (1969). The court declared that students and teachers do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." *Id.* at 506. Over the years, the ACLU has also successfully defended the right of students to wear an anti-abortion armband, a pro-LGBTQ t-shirt, and shirts critical of political figures. Schools may not discipline students for expressing an idea or political viewpoint in class or during school activities, as long as it does not cause a substantial disruption to the school environment.

It is true that the constitutional rights of students in public school are not the same as those of adults exercising First Amendment rights on public streets. Students' speech rights may be limited by reasonable time, place, and manner restrictions because of the unique characteristics of the school environment. A school may limit student speech, for example, through reasonable school-wide policies against cyberbullying. Additionally, schools may prohibit vulgar or offensive speech that is inconsistent with the "fundamental values of public school education." *Bethel Sch. Dist. No. 43 v. Fraser*, 478 U.S. 675, 685-86 (1986).

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RIGHTS OF LGBTQ STUDENTS

Cultivating a Safe Environment: Bullying of lesbian, gay, bisexual, transgender, and queer (“LGBTQ”) students has been documented as pervasive at many schools and is all too often ignored, or even encouraged, by school officials. LGBTQ students have a right to live their authentic lives and express themselves at school. Students have a right to be out of the closet at school, and conversely, public schools are not allowed to “out” students publicly. School officials and administrators must ensure they are creating a safe learning environment and protecting LGBTQ students from bullying and harassment. *See, e.g., Title IX, 20 U.S.C. § 1681* (schools may be liable if they act with deliberate indifference in failing to protect students from severe harassment on the basis of sex).



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Gender Markers, Pronouns, and Student Records: Students should be addressed using their preferred names and pronouns. Refusing to do so, or refusing to update the gender markers on a student’s records when provided with appropriate documentation, may be considered a form of sex-based discrimination under federal law. *See Grimm v. Gloucester County Sch. Bd.*, Civil No. 4:15-cv-52, 2019 U.S. Dist. Lexis 138246 (E.D. Va. Aug. 9, 2019). Likewise, a student’s right to privacy includes a student’s sexual orientation or gender identity. It is against the law for school officials to disclose or compel students to disclose this information, even if the student appears open about their sexual orientation or gender identity. *See C.N. v. Wolf*, 410 F. Supp. 2d 894, 903 (C.D. Cal. 2005).



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DISCIPLINE AND ARRESTS

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Due Process: The U.S. Constitution requires that students receive due process before disciplinary measures are imposed. This means that school officials must follow certain procedures before they can suspend or expel students from school. Students are generally entitled to receive notice prior to any suspension or expulsion. The notice must include the facts concerning the suspension or expulsion, and the basis for any accusations. The notice must also provide students an opportunity to explain their side. *See, e.g., Goss v. Lopez*, 419 U.S. 565 (1975). For Virginia’s specific procedural requirements, see Va. Code § 22.1-276.01 *et seq.*

Corporal Punishment: Corporal or physical punishment of students is strictly prohibited by Virginia law. *See* Va. Code § 22.1-279.1.

School Resource Officers: School Resource Officers (“SROs”) can protect students from outside danger, but often punish minor behaviors through ticketing and arrests. Law enforcement intervention should typically be a last resort for minor violations best handled by schools as discipline issues. For additional resources on how to limit disproportionate school-based arrests or referrals to law enforcement, visit the Model Guidance for Positive, Preventative Code of Student Conduct Policy and Alternatives to Suspension, available at http://www.doe.virginia.gov/support/student_conduct/index.shtml.



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Students with disabilities are provided legal protections under several federal laws. The Individuals with Disabilities Education Act (“IDEA”) requires that public schools provide eligible students with disabilities a “free, appropriate public education” in the least restrictive environment. *See* 20 U.S.C. § 1400 *et seq.* As part of the IDEA, schools must affirmatively locate, identify, and evaluate children in their district for special education and related services, a process known as “child find.” Parents may also request an evaluation at any time in writing or by speaking to a teacher or administrator, and the school district must respond to the parent’s request. Schools must educate students with disabilities in the least restrictive setting possible, with an emphasis on inclusion and integration in the regular education classroom where feasible. Additionally, students receiving special education services under the IDEA, as well as students suspected of being eligible to receive services, are entitled to certain protections and safeguards in the school discipline process. *See* 34 C.F.R. § 300.530 *et seq.*

Students with disabilities are also provided with protections under Section 504 of the Rehabilitation Act of 1974 (“Section 504”) and Title II of the Americans with Disabilities Act (“ADA”). Section 504 and the ADA prohibit discrimination against students with disabilities. This means that schools are prohibited by federal law from denying students with disabilities equal access to academic courses, field trips, extracurricular activities, school technology, and health services. School officials also have a duty to ensure that students with disabilities are not being discriminated against by being denied necessary accommodations. Restricting access to educational activities and opportunities, ignoring harassment and bullying, and failing to train staff on compliance with these laws is also prohibited under Section 504 and the ADA. *See also* Va. Code § 22.1-213 *et seq.*

RIGHTS OF IMMIGRANT STUDENTS

Schools cannot discriminate against students on the basis of race, color, or national origin. This includes discriminating against students on the basis of their immigration status. Undocumented students have a right to a free public education in your school district regardless of their immigration status, and schools cannot deny students of this right. *See, e.g., Plyler v. Doe*, 457 U.S. 202 (1982). Likewise, schools are not permitted to deny enrollment to a student based on their undocumented status; treat a student differently to determine residency; make inquiries of students or parents that may expose their undocumented status; require social security numbers from parents or students for purposes of enrollment; or engage in any other practices which may chill the right of access to school. Schools cannot turn away students with limited English proficiency; they must be provided with language instruction. *See, e.g., Lau v. Nichols*, 414 U.S. 563 (1974).

School officials should not allow immigration enforcement actions on school grounds without a judicial warrant based on probable cause that a criminal violation of the immigration laws has occurred. Schools should not call immigration authorities on students or consent to any immigration enforcement on school grounds without a criminal warrant. There is no state law requiring any state or local official to contact immigration officials nor any state or federal law prohibiting adoption of a policy that protects students and teachers from immigration action in the absence of a judicial criminal warrant.

RIGHTS OF PREGNANT STUDENTS

Schools are prohibited from excluding pregnant students and students with children under Title IX of the Education Amendments of 1972. This means that schools must also ensure that pregnant students or students with children have access to educational instruction, school activities, and reasonable accommodations, to the same extent that students with temporary medical conditions are given access, including the ability to make up missed classwork and learn in a safe, nonjudgmental environment. Schools are also not allowed to punish students who choose to terminate a pregnancy or to reveal a student's private medical information.



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Dr. Michael Gill
Hanover County
200 Berkley St
Ashland, VA 23005

RE: Students' Rights Reminder for the 2019-2020 Academic Year

Dear Superintendent,

As our communities prepare for the new academic year and students head back to school, it is important to be aware of the key issues affecting Virginia's students and their rights. Being aware of students' rights under state and federal law can help school officials avoid any potential legal complications and contribute to a positive learning environment that will allow each student to thrive.



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Federal and state laws afford children enrolled in school protection from discrimination and harassment based on race, color, religion, sex, national origin, or disability. Schools are responsible for ensuring these rights are protected and for promoting a safe school atmosphere. Additionally, schools are responsible for ensuring that students' right to free speech is respected and that the freedom to practice their religion—or no religion at all— is upheld.

Summarized below you will find information regarding: student speech rights; the Pledge of Allegiance; censorship; religious beliefs and accommodations; the rights of students who identify as LGBTQ; discipline and arrests; the rights of students with disabilities; the rights of students who are immigrants; and the rights of students who are pregnant.

We hope this information will help your school district understand the rights of students in schools and guide you in taking actions that ensure student rights are protected in a safe and supportive environment. Please do not hesitate to contact the ACLU of Virginia if you have any questions about these issues or if we can be of any assistance to you in evaluating and formulating school policy on any of these matters. We can be reached at (804) 644-8022 or acluva@acluva.org.

Very truly yours,

A handwritten signature in blue ink, which appears to read "Claire G. Gastañaga". The signature is fluid and cursive.

Claire G. Gastañaga
Executive Director



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Schools cannot discriminate against students on the basis of race, color, or national origin. This includes discriminating against students on the basis of their immigration status. Undocumented students have a right to a free public education in your school district regardless of their immigration status, and schools cannot deny students of this right. *See, e.g., Plyler v. Doe*, 457 U.S. 202 (1982). Likewise, schools are not permitted to deny enrollment to a student based on their undocumented status; treat a student differently to determine residency; make inquiries of students or parents that may expose their undocumented status; require social security numbers from parents or students for purposes of enrollment; or engage in any other practices which may chill the right of access to school. Schools cannot turn away students with limited English proficiency; they must be provided with language instruction. *See, e.g., Lau v. Nichols*, 414 U.S. 563 (1974).

School officials should not allow immigration enforcement actions on school grounds without a judicial warrant based on probable cause that a criminal violation of the immigration laws has occurred. Schools should not call immigration authorities on students or consent to any immigration enforcement on school grounds without a criminal warrant. There is no state law requiring any state or local official to contact immigration officials nor any state or federal law prohibiting adoption of a policy that protects students and teachers from immigration action in the absence of a judicial criminal warrant.

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Schools are prohibited from excluding pregnant students and students with children under Title IX of the Education Amendments of 1972. This means that schools must also ensure that pregnant students or students with children have access to educational instruction, school activities, and reasonable accommodations, to the same extent that students with temporary medical conditions are given access, including the ability to make up missed classwork and learn in a safe, nonjudgmental environment. Schools are also not allowed to punish students who choose to terminate a pregnancy or to reveal a student's private medical information.



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Mr. Michael Richards
Harrisonburg
One Court Square
Harrisonburg, VA 22801

RE: Students' Rights Reminder for the 2019-2020 Academic Year

Dear Superintendent,

As our communities prepare for the new academic year and students head back to school, it is important to be aware of the key issues affecting Virginia's students and their rights. Being aware of students' rights under state and federal law can help school officials avoid any potential legal complications and contribute to a positive learning environment that will allow each student to thrive.



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Federal and state laws afford children enrolled in school protection from discrimination and harassment based on race, color, religion, sex, national origin, or disability. Schools are responsible for ensuring these rights are protected and for promoting a safe school atmosphere. Additionally, schools are responsible for ensuring that students' right to free speech is respected and that the freedom to practice their religion—or no religion at all— is upheld.

Summarized below you will find information regarding: student speech rights; the Pledge of Allegiance; censorship; religious beliefs and accommodations; the rights of students who identify as LGBTQ; discipline and arrests; the rights of students with disabilities; the rights of students who are immigrants; and the rights of students who are pregnant.

We hope this information will help your school district understand the rights of students in schools and guide you in taking actions that ensure student rights are protected in a safe and supportive environment. Please do not hesitate to contact the ACLU of Virginia if you have any questions about these issues or if we can be of any assistance to you in evaluating and formulating school policy on any of these matters. We can be reached at (804) 644-8022 or acluva@acluva.org.

Very truly yours,

A handwritten signature in blue ink, which appears to read "Claire G. Gastañaga".

Claire G. Gastañaga
Executive Director



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STUDENT SPEECH RIGHTS

The First Amendment ensures that students cannot be punished for exercising free speech rights, even if administrators do not approve of their message. In the landmark Supreme Court case *Tinker v. Des Moines Independent Community School District*, the ACLU successfully challenged a school district's decision to suspend three students for wearing armbands in protest of the Vietnam War. 393 U.S. 503 (1969). The court declared that students and teachers do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." *Id.* at 506. Over the years, the ACLU has also successfully defended the right of students to wear an anti-abortion armband, a pro-LGBTQ t-shirt, and shirts critical of political figures. Schools may not discipline students for expressing an idea or political viewpoint in class or during school activities, as long as it does not cause a substantial disruption to the school environment.

It is true that the constitutional rights of students in public school are not the same as those of adults exercising First Amendment rights on public streets. Students' speech rights may be limited by reasonable time, place, and manner restrictions because of the unique characteristics of the school environment. A school may limit student speech, for example, through reasonable school-wide policies against cyberbullying. Additionally, schools may prohibit vulgar or offensive speech that is inconsistent with the "fundamental values of public school education." *Bethel Sch. Dist. No. 43 v. Fraser*, 478 U.S. 675, 685-86 (1986).

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RIGHTS OF LGBTQ STUDENTS

Cultivating a Safe Environment: Bullying of lesbian, gay, bisexual, transgender, and queer (“LGBTQ”) students has been documented as pervasive at many schools and is all too often ignored, or even encouraged, by school officials. LGBTQ students have a right to live their authentic lives and express themselves at school. Students have a right to be out of the closet at school, and conversely, public schools are not allowed to “out” students publicly. School officials and administrators must ensure they are creating a safe learning environment and protecting LGBTQ students from bullying and harassment. *See, e.g., Title IX, 20 U.S.C. § 1681* (schools may be liable if they act with deliberate indifference in failing to protect students from severe harassment on the basis of sex).



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Discipline: The intimate relationships of LGBTQ students must be treated with equal dignity as those of heterosexual students. Policies that prohibit same-sex couples or dates from attending prom, homecoming, or other dance functions violates students’ rights under Title IX of the Education Amendments of 1972, the Equal Protection Clause of the U.S. Constitution, and the Bill of Rights of the Virginia Constitution. LGBTQ students should not be punished more severely than heterosexual students for similar behavior, including for displays of affection.

LGBTQ Student Organizations: Students interested in forming a student organization, typically called a gay-straight alliance (“GSA”), are to be treated the same as students forming any other noncurricular organization or club. *See, e.g., 20 U.S.C. § 4071(a)* (if a school allows any noncurricular student group to meet, it cannot deny other groups the same access based on the content of their interest); *Gay All. of Students v. Matthews*, 544 F.2d 162 (4th Cir. 1976).

Gender Markers, Pronouns, and Student Records: Students should be addressed using their preferred names and pronouns. Refusing to do so, or refusing to update the gender markers on a student’s records when provided with appropriate documentation, may be considered a form of sex-based discrimination under federal law. *See Grimm v. Gloucester County Sch. Bd.*, Civil No. 4:15-cv-52, 2019 U.S. Dist. Lexis 138246 (E.D. Va. Aug. 9, 2019). Likewise, a student’s right to privacy includes a student’s sexual orientation or gender identity. It is against the law for school officials to disclose or compel students to disclose this information, even if the student appears open about their sexual orientation or gender identity. *See C.N. v. Wolf*, 410 F. Supp. 2d 894, 903 (C.D. Cal. 2005).



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DISCIPLINE AND ARRESTS

Generally: School discipline policies and practices should be fair and equitable and should prioritize prevention and intervention rather than harsh punishments like suspension, expulsion, and referral to law enforcement. The goal of discipline should be to teach appropriate behaviors and minimize the time students spend out of class. In Spring 2015, the Center for Public Integrity released a study finding that Virginia led the country in schools referring students to law enforcement, a phenomenon known as the “school-to-prison pipeline.” Additional studies conducted by the Virginia Department of Education found that African American students and students with disabilities were disproportionately represented in both suspensions and referrals to law enforcement throughout Virginia schools. These disparities open up school districts to potential legal challenges for race and disability discrimination under federal civil rights laws. *See, e.g.*, Complaint against Richmond Public Schools, available at <https://acluva.org/en/cases/equal-treatment-richmond-public-school-students>. In order to avoid potential legal problems, and to provide a more equitable school environment, school officials should reevaluate and revise their current discipline policies and practices to create a more positive and preventative approach to student conduct. The Virginia Board of Education has provided a blueprint for schools to use in revising their outdated practices – the Model Guidance for Positive, Preventative Code of Student Conduct Policy and Alternatives to Suspension, available at http://www.doe.virginia.gov/support/student_conduct/index.shtml.

Due Process: The U.S. Constitution requires that students receive due process before disciplinary measures are imposed. This means that school officials must follow certain procedures before they can suspend or expel students from school. Students are generally entitled to receive notice prior to any suspension or expulsion. The notice must include the facts concerning the suspension or expulsion, and the basis for any accusations. The notice must also provide students an opportunity to explain their side. *See, e.g., Goss v. Lopez*, 419 U.S. 565 (1975). For Virginia’s specific procedural requirements, see Va. Code § 22.1-276.01 *et seq.*

Corporal Punishment: Corporal or physical punishment of students is strictly prohibited by Virginia law. *See* Va. Code § 22.1-279.1.

School Resource Officers: School Resource Officers (“SROs”) can protect students from outside danger, but often punish minor behaviors through ticketing and arrests. Law enforcement intervention should typically be a last resort for minor violations best handled by schools as discipline issues. For additional resources on how to limit disproportionate school-based arrests or referrals to law enforcement, visit the Model Guidance for Positive, Preventative Code of Student Conduct Policy and Alternatives to Suspension, available at http://www.doe.virginia.gov/support/student_conduct/index.shtml.



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RIGHTS OF STUDENTS WITH DISABILITIES

Students with disabilities are provided legal protections under several federal laws. The Individuals with Disabilities Education Act (“IDEA”) requires that public schools provide eligible students with disabilities a “free, appropriate public education” in the least restrictive environment. *See* 20 U.S.C. § 1400 *et seq.* As part of the IDEA, schools must affirmatively locate, identify, and evaluate children in their district for special education and related services, a process known as “child find.” Parents may also request an evaluation at any time in writing or by speaking to a teacher or administrator, and the school district must respond to the parent’s request. Schools must educate students with disabilities in the least restrictive setting possible, with an emphasis on inclusion and integration in the regular education classroom where feasible. Additionally, students receiving special education services under the IDEA, as well as students suspected of being eligible to receive services, are entitled to certain protections and safeguards in the school discipline process. *See* 34 C.F.R. § 300.530 *et seq.*

Students with disabilities are also provided with protections under Section 504 of the Rehabilitation Act of 1974 (“Section 504”) and Title II of the Americans with Disabilities Act (“ADA”). Section 504 and the ADA prohibit discrimination against students with disabilities. This means that schools are prohibited by federal law from denying students with disabilities equal access to academic courses, field trips, extracurricular activities, school technology, and health services. School officials also have a duty to ensure that students with disabilities are not being discriminated against by being denied necessary accommodations. Restricting access to educational activities and opportunities, ignoring harassment and bullying, and failing to train staff on compliance with these laws is also prohibited under Section 504 and the ADA. *See also* Va. Code § 22.1-213 *et seq.*

RIGHTS OF IMMIGRANT STUDENTS

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RIGHTS OF PREGNANT STUDENTS

Schools are prohibited from excluding pregnant students and students with children under Title IX of the Education Amendments of 1972. This means that schools must also ensure that pregnant students or students with children have access to educational instruction, school activities, and reasonable accommodations, to the same extent that students with temporary medical conditions are given access, including the ability to make up missed classwork and learn in a safe, nonjudgmental environment. Schools are also not allowed to punish students who choose to terminate a pregnancy or to reveal a student's private medical information.



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Dr. Amy E Cashwell
Henrico County
3820 Nine Mile Rd.
Henrico, VA 23223

RE: Students' Rights Reminder for the 2019-2020 Academic Year

Dear Superintendent,

As our communities prepare for the new academic year and students head back to school, it is important to be aware of the key issues affecting Virginia's students and their rights. Being aware of students' rights under state and federal law can help school officials avoid any potential legal complications and contribute to a positive learning environment that will allow each student to thrive.



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Summarized below you will find information regarding: student speech rights; the Pledge of Allegiance; censorship; religious beliefs and accommodations; the rights of students who identify as LGBTQ; discipline and arrests; the rights of students with disabilities; the rights of students who are immigrants; and the rights of students who are pregnant.

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Very truly yours,

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Claire G. Gastañaga
Executive Director



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DISCIPLINE AND ARRESTS

Generally: School discipline policies and practices should be fair and equitable and should prioritize prevention and intervention rather than harsh punishments like suspension, expulsion, and referral to law enforcement. The goal of discipline should be to teach appropriate behaviors and minimize the time students spend out of class. In Spring 2015, the Center for Public Integrity released a study finding that Virginia led the country in schools referring students to law enforcement, a phenomenon known as the “school-to-prison pipeline.” Additional studies conducted by the Virginia Department of Education found that African American students and students with disabilities were disproportionately represented in both suspensions and referrals to law enforcement throughout Virginia schools. These disparities open up school districts to potential legal challenges for race and disability discrimination under federal civil rights laws. *See, e.g.*, Complaint against Richmond Public Schools, available at <https://acluva.org/en/cases/equal-treatment-richmond-public-school-students>. In order to avoid potential legal problems, and to provide a more equitable school environment, school officials should reevaluate and revise their current discipline policies and practices to create a more positive and preventative approach to student conduct. The Virginia Board of Education has provided a blueprint for schools to use in revising their outdated practices – the Model Guidance for Positive, Preventative Code of Student Conduct Policy and Alternatives to Suspension, available at http://www.doe.virginia.gov/support/student_conduct/index.shtml.

Due Process: The U.S. Constitution requires that students receive due process before disciplinary measures are imposed. This means that school officials must follow certain procedures before they can suspend or expel students from school. Students are generally entitled to receive notice prior to any suspension or expulsion. The notice must include the facts concerning the suspension or expulsion, and the basis for any accusations. The notice must also provide students an opportunity to explain their side. *See, e.g., Goss v. Lopez*, 419 U.S. 565 (1975). For Virginia’s specific procedural requirements, see Va. Code § 22.1-276.01 *et seq.*

Corporal Punishment: Corporal or physical punishment of students is strictly prohibited by Virginia law. *See* Va. Code § 22.1-279.1.

School Resource Officers: School Resource Officers (“SROs”) can protect students from outside danger, but often punish minor behaviors through ticketing and arrests. Law enforcement intervention should typically be a last resort for minor violations best handled by schools as discipline issues. For additional resources on how to limit disproportionate school-based arrests or referrals to law enforcement, visit the Model Guidance for Positive, Preventative Code of Student Conduct Policy and Alternatives to Suspension, available at http://www.doe.virginia.gov/support/student_conduct/index.shtml.



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RIGHTS OF STUDENTS WITH DISABILITIES

Students with disabilities are provided legal protections under several federal laws. The Individuals with Disabilities Education Act (“IDEA”) requires that public schools provide eligible students with disabilities a “free, appropriate public education” in the least restrictive environment. *See* 20 U.S.C. § 1400 *et seq.* As part of the IDEA, schools must affirmatively locate, identify, and evaluate children in their district for special education and related services, a process known as “child find.” Parents may also request an evaluation at any time in writing or by speaking to a teacher or administrator, and the school district must respond to the parent’s request. Schools must educate students with disabilities in the least restrictive setting possible, with an emphasis on inclusion and integration in the regular education classroom where feasible. Additionally, students receiving special education services under the IDEA, as well as students suspected of being eligible to receive services, are entitled to certain protections and safeguards in the school discipline process. *See* 34 C.F.R. § 300.530 *et seq.*

Students with disabilities are also provided with protections under Section 504 of the Rehabilitation Act of 1974 (“Section 504”) and Title II of the Americans with Disabilities Act (“ADA”). Section 504 and the ADA prohibit discrimination against students with disabilities. This means that schools are prohibited by federal law from denying students with disabilities equal access to academic courses, field trips, extracurricular activities, school technology, and health services. School officials also have a duty to ensure that students with disabilities are not being discriminated against by being denied necessary accommodations. Restricting access to educational activities and opportunities, ignoring harassment and bullying, and failing to train staff on compliance with these laws is also prohibited under Section 504 and the ADA. *See also* Va. Code § 22.1-213 *et seq.*

RIGHTS OF IMMIGRANT STUDENTS

Schools cannot discriminate against students on the basis of race, color, or national origin. This includes discriminating against students on the basis of their immigration status. Undocumented students have a right to a free public education in your school district regardless of their immigration status, and schools cannot deny students of this right. *See, e.g., Plyler v. Doe*, 457 U.S. 202 (1982). Likewise, schools are not permitted to deny enrollment to a student based on their undocumented status; treat a student differently to determine residency; make inquiries of students or parents that may expose their undocumented status; require social security numbers from parents or students for purposes of enrollment; or engage in any other practices which may chill the right of access to school. Schools cannot turn away students with limited English proficiency; they must be provided with language instruction. *See, e.g., Lau v. Nichols*, 414 U.S. 563 (1974).

School officials should not allow immigration enforcement actions on school grounds without a judicial warrant based on probable cause that a criminal violation of the immigration laws has occurred. Schools should not call immigration authorities on students or consent to any immigration enforcement on school grounds without a criminal warrant. There is no state law requiring any state or local official to contact immigration officials nor any state or federal law prohibiting adoption of a policy that protects students and teachers from immigration action in the absence of a judicial criminal warrant.

RIGHTS OF PREGNANT STUDENTS

Schools are prohibited from excluding pregnant students and students with children under Title IX of the Education Amendments of 1972. This means that schools must also ensure that pregnant students or students with children have access to educational instruction, school activities, and reasonable accommodations, to the same extent that students with temporary medical conditions are given access, including the ability to make up missed classwork and learn in a safe, nonjudgmental environment. Schools are also not allowed to punish students who choose to terminate a pregnancy or to reveal a student's private medical information.



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Mrs. Sandy C. Strayer
Henry County
PO Box 8958
Collinsville, VA 24078

RE: Students' Rights Reminder for the 2019-2020 Academic Year

Dear Superintendent,

As our communities prepare for the new academic year and students head back to school, it is important to be aware of the key issues affecting Virginia's students and their rights. Being aware of students' rights under state and federal law can help school officials avoid any potential legal complications and contribute to a positive learning environment that will allow each student to thrive.



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Federal and state laws afford children enrolled in school protection from discrimination and harassment based on race, color, religion, sex, national origin, or disability. Schools are responsible for ensuring these rights are protected and for promoting a safe school atmosphere. Additionally, schools are responsible for ensuring that students' right to free speech is respected and that the freedom to practice their religion—or no religion at all— is upheld.

Summarized below you will find information regarding: student speech rights; the Pledge of Allegiance; censorship; religious beliefs and accommodations; the rights of students who identify as LGBTQ; discipline and arrests; the rights of students with disabilities; the rights of students who are immigrants; and the rights of students who are pregnant.

We hope this information will help your school district understand the rights of students in schools and guide you in taking actions that ensure student rights are protected in a safe and supportive environment. Please do not hesitate to contact the ACLU of Virginia if you have any questions about these issues or if we can be of any assistance to you in evaluating and formulating school policy on any of these matters. We can be reached at (804) 644-8022 or acluva@acluva.org.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Claire G. Gastañaga". The signature is fluid and cursive.

Claire G. Gastañaga
Executive Director



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STUDENT SPEECH RIGHTS

The First Amendment ensures that students cannot be punished for exercising free speech rights, even if administrators do not approve of their message. In the landmark Supreme Court case *Tinker v. Des Moines Independent Community School District*, the ACLU successfully challenged a school district's decision to suspend three students for wearing armbands in protest of the Vietnam War. 393 U.S. 503 (1969). The court declared that students and teachers do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." *Id.* at 506. Over the years, the ACLU has also successfully defended the right of students to wear an anti-abortion armband, a pro-LGBTQ t-shirt, and shirts critical of political figures. Schools may not discipline students for expressing an idea or political viewpoint in class or during school activities, as long as it does not cause a substantial disruption to the school environment.

It is true that the constitutional rights of students in public school are not the same as those of adults exercising First Amendment rights on public streets. Students' speech rights may be limited by reasonable time, place, and manner restrictions because of the unique characteristics of the school environment. A school may limit student speech, for example, through reasonable school-wide policies against cyberbullying. Additionally, schools may prohibit vulgar or offensive speech that is inconsistent with the "fundamental values of public school education." *Bethel Sch. Dist. No. 43 v. Fraser*, 478 U.S. 675, 685-86 (1986).

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Schools cannot punish students for refusing to salute the flag or say the Pledge of Allegiance. *W.Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624 (1943); *Sherman v. Comm. Consol. Sch. Dist. 21*, 980 F.2d 437 (7th Cir. 1992). School officials also cannot force students to stand during the Pledge of Allegiance or leave the room if a student refuses to recite the Pledge. *See* Va. Code § 22.1-202(C) ("[N]o student shall be compelled to recite the Pledge if he, his parent or legal guardian objects on religious, philosophical or other grounds to his participating in this exercise.")

CENSORSHIP

Books: Banning books, removing books and materials from a classroom or library, or otherwise making it difficult for students to read a broad array of literature limits intellectual freedom. Making books and ideas unavailable based on their content or viewpoint or taking books out of schools because they are controversial, unpopular, or offensive, may violate the First Amendment. *See, e.g., Bd. of Educ. v. Pico*, 457 U.S. 853 (1982). Courts view school libraries as the main place where students exercise their freedom "to inquire, to study and to evaluate, to gain new maturity and understanding." *Id.* at 868.

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RELIGIOUS BELIEFS AND ACCOMMODATIONS

Free Exercise Clause: Under the First Amendment’s Free Exercise Clause, students have the right to worship as they see fit, with only limited restrictions. This means that while at school, students are free to practice their religion or nonreligion and to express themselves religiously without interference by school officials. Students may, for example, wear religious attire or clothing with religious messaging to school; post religious messages or images on their lockers; or bring religious materials, including religious texts or objects, to school. School officials may not, for instance, require students to remove their hijab, yarmulke, or other head covering, as it substantially burdens the practice of the student’s religion. *See, e.g., Va. Code § 22.1-203.1 et seq.; VIRGINIA STATE BOARD OF EDUCATION, GUIDELINES CONCERNING RELIGIOUS ACTIVITY IN THE PUBLIC SCHOOLS* (1995).

Establishment Clause: Under the First Amendment’s Establishment Clause, school officials cannot favor one religion over another or favor religion over nonbelief. In practice, this means that school officials and teachers cannot conduct prayer or bible-reading sessions, organize or participate in student-led prayer, or hold a prayer at graduation or sporting events, even when participation is voluntary. *See, e.g., Abington Sch. Dist. v. Schempp*, 374 U.S. 203 (1963); *Engel v. Vitale*, 370 U.S. 421 (1962); *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 308 (2000); *Lee v. Weisman*, 505 U.S. 577 (1992). Teachers cannot lead students in devotional activities or encourage student participation in religious activity before or after school, during class, or at school-sponsored activities. In fact, in the public-school context, the Supreme Court has invalidated almost every instance of school- or teacher-sponsored religious expression. Under Virginia law, school boards are permitted to establish a daily observance of one minute of silence, but the school board must be careful to ensure that its policy has secular justifications and is not merely a pretense to encourage prayer. *See, e.g., Va. Code § 22.1-203; VIRGINIA STATE BOARD OF EDUCATION, GUIDELINES CONCERNING RELIGIOUS ACTIVITY IN THE PUBLIC SCHOOLS* (1995).

RIGHTS OF LGBTQ STUDENTS

Cultivating a Safe Environment: Bullying of lesbian, gay, bisexual, transgender, and queer (“LGBTQ”) students has been documented as pervasive at many schools and is all too often ignored, or even encouraged, by school officials. LGBTQ students have a right to live their authentic lives and express themselves at school. Students have a right to be out of the closet at school, and conversely, public schools are not allowed to “out” students publicly. School officials and administrators must ensure they are creating a safe learning environment and protecting LGBTQ students from bullying and harassment. *See, e.g., Title IX, 20 U.S.C. § 1681* (schools may be liable if they act with deliberate indifference in failing to protect students from severe harassment on the basis of sex).



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Restrooms & Locker Rooms: Transgender students must be allowed to use the restroom facilities consistent with their gender identity. Schools cannot create policies that require transgender students to use restrooms or locker rooms that do not correspond with their gender identity, and schools may not create policies that require transgender students to use single-user facilities. *See Grimm v. Gloucester County Sch. Bd.*, Civil No. 4:15-cv-52, 2019 U.S. Dist. Lexis 138246 (E.D. Va. Aug. 9, 2019).

Dress Code: School officials cannot force students to wear clothing inconsistent with their gender identity. Public schools may have dress codes, but dress codes cannot treat students differently based on their gender, force students to conform to sex stereotypes, or censor particular viewpoints. Schools cannot enact dress codes based on the stereotype that only girls can wear some types of clothes and only boys wear other types of clothes. *See, e.g., U.S. v. Virginia*, 518 U.S. 515, 533 (1996) (government actors must not treat male and female students differently because of “overbroad generalizations about the different talents, capacities, or preferences of males and females.”). Schools may, for example, require that skirts be a certain length; however, they cannot require that some students wear skirts and prohibit others from doing so based on the student’s sex or gender expression. This also applies to pants, ties, or other clothing associated with traditional gender roles. And it applies to attire requirements for homecoming, prom, graduation, and other special school events.

Discipline: The intimate relationships of LGBTQ students must be treated with equal dignity as those of heterosexual students. Policies that prohibit same-sex couples or dates from attending prom, homecoming, or other dance functions violates students’ rights under Title IX of the Education Amendments of 1972, the Equal Protection Clause of the U.S. Constitution, and the Bill of Rights of the Virginia Constitution. LGBTQ students should not be punished more severely than heterosexual students for similar behavior, including for displays of affection.

LGBTQ Student Organizations: Students interested in forming a student organization, typically called a gay-straight alliance (“GSA”), are to be treated the same as students forming any other noncurricular organization or club. *See, e.g., 20 U.S.C. § 4071(a)* (if a school allows any noncurricular student group to meet, it cannot deny other groups the same access based on the content of their interest); *Gay All. of Students v. Matthews*, 544 F.2d 162 (4th Cir. 1976).

Gender Markers, Pronouns, and Student Records: Students should be addressed using their preferred names and pronouns. Refusing to do so, or refusing to update the gender markers on a student’s records when provided with appropriate documentation, may be considered a form of sex-based discrimination under federal law. *See Grimm v. Gloucester County Sch. Bd.*, Civil No. 4:15-cv-52, 2019 U.S. Dist. Lexis 138246 (E.D. Va. Aug. 9, 2019). Likewise, a student’s right to privacy includes a student’s sexual orientation or gender identity. It is against the law for school officials to disclose or compel students to disclose this information, even if the student appears open about their sexual orientation or gender identity. *See C.N. v. Wolf*, 410 F. Supp. 2d 894, 903 (C.D. Cal. 2005).



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Schools are prohibited from excluding pregnant students and students with children under Title IX of the Education Amendments of 1972. This means that schools must also ensure that pregnant students or students with children have access to educational instruction, school activities, and reasonable accommodations, to the same extent that students with temporary medical conditions are given access, including the ability to make up missed classwork and learn in a safe, nonjudgmental environment. Schools are also not allowed to punish students who choose to terminate a pregnancy or to reveal a student's private medical information.



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Dr. Thomas Schott
Highland County
P.O. Box 250
Monterey, VA 24465

RE: Students' Rights Reminder for the 2019-2020 Academic Year

Dear Superintendent,

As our communities prepare for the new academic year and students head back to school, it is important to be aware of the key issues affecting Virginia's students and their rights. Being aware of students' rights under state and federal law can help school officials avoid any potential legal complications and contribute to a positive learning environment that will allow each student to thrive.



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Restrooms & Locker Rooms: Transgender students must be allowed to use the restroom facilities consistent with their gender identity. Schools cannot create policies that require transgender students to use restrooms or locker rooms that do not correspond with their gender identity, and schools may not create policies that require transgender students to use single-user facilities. *See Grimm v. Gloucester County Sch. Bd.*, Civil No. 4:15-cv-52, 2019 U.S. Dist. Lexis 138246 (E.D. Va. Aug. 9, 2019).

Dress Code: School officials cannot force students to wear clothing inconsistent with their gender identity. Public schools may have dress codes, but dress codes cannot treat students differently based on their gender, force students to conform to sex stereotypes, or censor particular viewpoints. Schools cannot enact dress codes based on the stereotype that only girls can wear some types of clothes and only boys wear other types of clothes. *See, e.g., U.S. v. Virginia*, 518 U.S. 515, 533 (1996) (government actors must not treat male and female students differently because of “overbroad generalizations about the different talents, capacities, or preferences of males and females.”). Schools may, for example, require that skirts be a certain length; however, they cannot require that some students wear skirts and prohibit others from doing so based on the student’s sex or gender expression. This also applies to pants, ties, or other clothing associated with traditional gender roles. And it applies to attire requirements for homecoming, prom, graduation, and other special school events.

Discipline: The intimate relationships of LGBTQ students must be treated with equal dignity as those of heterosexual students. Policies that prohibit same-sex couples or dates from attending prom, homecoming, or other dance functions violates students’ rights under Title IX of the Education Amendments of 1972, the Equal Protection Clause of the U.S. Constitution, and the Bill of Rights of the Virginia Constitution. LGBTQ students should not be punished more severely than heterosexual students for similar behavior, including for displays of affection.

LGBTQ Student Organizations: Students interested in forming a student organization, typically called a gay-straight alliance (“GSA”), are to be treated the same as students forming any other noncurricular organization or club. *See, e.g., 20 U.S.C. § 4071(a)* (if a school allows any noncurricular student group to meet, it cannot deny other groups the same access based on the content of their interest); *Gay All. of Students v. Matthews*, 544 F.2d 162 (4th Cir. 1976).

Gender Markers, Pronouns, and Student Records: Students should be addressed using their preferred names and pronouns. Refusing to do so, or refusing to update the gender markers on a student’s records when provided with appropriate documentation, may be considered a form of sex-based discrimination under federal law. *See Grimm v. Gloucester County Sch. Bd.*, Civil No. 4:15-cv-52, 2019 U.S. Dist. Lexis 138246 (E.D. Va. Aug. 9, 2019). Likewise, a student’s right to privacy includes a student’s sexual orientation or gender identity. It is against the law for school officials to disclose or compel students to disclose this information, even if the student appears open about their sexual orientation or gender identity. *See C.N. v. Wolf*, 410 F. Supp. 2d 894, 903 (C.D. Cal. 2005).



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DISCIPLINE AND ARRESTS

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Due Process: The U.S. Constitution requires that students receive due process before disciplinary measures are imposed. This means that school officials must follow certain procedures before they can suspend or expel students from school. Students are generally entitled to receive notice prior to any suspension or expulsion. The notice must include the facts concerning the suspension or expulsion, and the basis for any accusations. The notice must also provide students an opportunity to explain their side. *See, e.g., Goss v. Lopez*, 419 U.S. 565 (1975). For Virginia’s specific procedural requirements, see Va. Code § 22.1-276.01 *et seq.*

Corporal Punishment: Corporal or physical punishment of students is strictly prohibited by Virginia law. *See* Va. Code § 22.1-279.1.

School Resource Officers: School Resource Officers (“SROs”) can protect students from outside danger, but often punish minor behaviors through ticketing and arrests. Law enforcement intervention should typically be a last resort for minor violations best handled by schools as discipline issues. For additional resources on how to limit disproportionate school-based arrests or referrals to law enforcement, visit the Model Guidance for Positive, Preventative Code of Student Conduct Policy and Alternatives to Suspension, available at http://www.doe.virginia.gov/support/student_conduct/index.shtml.



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Students with disabilities are provided legal protections under several federal laws. The Individuals with Disabilities Education Act (“IDEA”) requires that public schools provide eligible students with disabilities a “free, appropriate public education” in the least restrictive environment. *See* 20 U.S.C. § 1400 *et seq.* As part of the IDEA, schools must affirmatively locate, identify, and evaluate children in their district for special education and related services, a process known as “child find.” Parents may also request an evaluation at any time in writing or by speaking to a teacher or administrator, and the school district must respond to the parent’s request. Schools must educate students with disabilities in the least restrictive setting possible, with an emphasis on inclusion and integration in the regular education classroom where feasible. Additionally, students receiving special education services under the IDEA, as well as students suspected of being eligible to receive services, are entitled to certain protections and safeguards in the school discipline process. *See* 34 C.F.R. § 300.530 *et seq.*

Students with disabilities are also provided with protections under Section 504 of the Rehabilitation Act of 1974 (“Section 504”) and Title II of the Americans with Disabilities Act (“ADA”). Section 504 and the ADA prohibit discrimination against students with disabilities. This means that schools are prohibited by federal law from denying students with disabilities equal access to academic courses, field trips, extracurricular activities, school technology, and health services. School officials also have a duty to ensure that students with disabilities are not being discriminated against by being denied necessary accommodations. Restricting access to educational activities and opportunities, ignoring harassment and bullying, and failing to train staff on compliance with these laws is also prohibited under Section 504 and the ADA. *See also* Va. Code § 22.1-213 *et seq.*

RIGHTS OF IMMIGRANT STUDENTS

Schools cannot discriminate against students on the basis of race, color, or national origin. This includes discriminating against students on the basis of their immigration status. Undocumented students have a right to a free public education in your school district regardless of their immigration status, and schools cannot deny students of this right. *See, e.g., Plyler v. Doe*, 457 U.S. 202 (1982). Likewise, schools are not permitted to deny enrollment to a student based on their undocumented status; treat a student differently to determine residency; make inquiries of students or parents that may expose their undocumented status; require social security numbers from parents or students for purposes of enrollment; or engage in any other practices which may chill the right of access to school. Schools cannot turn away students with limited English proficiency; they must be provided with language instruction. *See, e.g., Lau v. Nichols*, 414 U.S. 563 (1974).

School officials should not allow immigration enforcement actions on school grounds without a judicial warrant based on probable cause that a criminal violation of the immigration laws has occurred. Schools should not call immigration authorities on students or consent to any immigration enforcement on school grounds without a criminal warrant. There is no state law requiring any state or local official to contact immigration officials nor any state or federal law prohibiting adoption of a policy that protects students and teachers from immigration action in the absence of a judicial criminal warrant.

RIGHTS OF PREGNANT STUDENTS

Schools are prohibited from excluding pregnant students and students with children under Title IX of the Education Amendments of 1972. This means that schools must also ensure that pregnant students or students with children have access to educational instruction, school activities, and reasonable accommodations, to the same extent that students with temporary medical conditions are given access, including the ability to make up missed classwork and learn in a safe, nonjudgmental environment. Schools are also not allowed to punish students who choose to terminate a pregnancy or to reveal a student's private medical information.



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Dr. Melody D. Hackney
Hopewell
103 N. 12th Avenue
Hopewell, VA 23860

RE: Students' Rights Reminder for the 2019-2020 Academic Year

Dear Superintendent,

As our communities prepare for the new academic year and students head back to school, it is important to be aware of the key issues affecting Virginia's students and their rights. Being aware of students' rights under state and federal law can help school officials avoid any potential legal complications and contribute to a positive learning environment that will allow each student to thrive.



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Federal and state laws afford children enrolled in school protection from discrimination and harassment based on race, color, religion, sex, national origin, or disability. Schools are responsible for ensuring these rights are protected and for promoting a safe school atmosphere. Additionally, schools are responsible for ensuring that students' right to free speech is respected and that the freedom to practice their religion—or no religion at all— is upheld.

Summarized below you will find information regarding: student speech rights; the Pledge of Allegiance; censorship; religious beliefs and accommodations; the rights of students who identify as LGBTQ; discipline and arrests; the rights of students with disabilities; the rights of students who are immigrants; and the rights of students who are pregnant.

We hope this information will help your school district understand the rights of students in schools and guide you in taking actions that ensure student rights are protected in a safe and supportive environment. Please do not hesitate to contact the ACLU of Virginia if you have any questions about these issues or if we can be of any assistance to you in evaluating and formulating school policy on any of these matters. We can be reached at (804) 644-8022 or acluva@acluva.org.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Claire G. Gastañaga". The signature is fluid and cursive.

Claire G. Gastañaga
Executive Director



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STUDENT SPEECH RIGHTS

The First Amendment ensures that students cannot be punished for exercising free speech rights, even if administrators do not approve of their message. In the landmark Supreme Court case *Tinker v. Des Moines Independent Community School District*, the ACLU successfully challenged a school district's decision to suspend three students for wearing armbands in protest of the Vietnam War. 393 U.S. 503 (1969). The court declared that students and teachers do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." *Id.* at 506. Over the years, the ACLU has also successfully defended the right of students to wear an anti-abortion armband, a pro-LGBTQ t-shirt, and shirts critical of political figures. Schools may not discipline students for expressing an idea or political viewpoint in class or during school activities, as long as it does not cause a substantial disruption to the school environment.

It is true that the constitutional rights of students in public school are not the same as those of adults exercising First Amendment rights on public streets. Students' speech rights may be limited by reasonable time, place, and manner restrictions because of the unique characteristics of the school environment. A school may limit student speech, for example, through reasonable school-wide policies against cyberbullying. Additionally, schools may prohibit vulgar or offensive speech that is inconsistent with the "fundamental values of public school education." *Bethel Sch. Dist. No. 43 v. Fraser*, 478 U.S. 675, 685-86 (1986).

School officials should take care, however, not to define peaceful assembly as behavior that causes a substantial disruption to school activities. If students engage in a walkout, school officials may choose to discipline students for missing class but may not engage in harsher punishment because of the message or political nature of the action. School officials must not draw distinctions based on the content of a student's speech or expressive activity in imposing discipline.

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Schools cannot punish students for refusing to salute the flag or say the Pledge of Allegiance. *W.Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624 (1943); *Sherman v. Comm. Consol. Sch. Dist. 21*, 980 F.2d 437 (7th Cir. 1992). School officials also cannot force students to stand during the Pledge of Allegiance or leave the room if a student refuses to recite the Pledge. *See* Va. Code § 22.1-202(C) ("[N]o student shall be compelled to recite the Pledge if he, his parent or legal guardian objects on religious, philosophical or other grounds to his participating in this exercise.")

CENSORSHIP

Books: Banning books, removing books and materials from a classroom or library, or otherwise making it difficult for students to read a broad array of literature limits intellectual freedom. Making books and ideas unavailable based on their content or viewpoint or taking books out of schools because they are controversial, unpopular, or offensive, may violate the First Amendment. *See, e.g., Bd. of Educ. v. Pico*, 457 U.S. 853 (1982). Courts view school libraries as the main place where students exercise their freedom "to inquire, to study and to evaluate, to gain new maturity and understanding." *Id.* at 868.

Student Publications: Schools may review and control the content of school sponsored student publications including student newspapers, yearbooks, literary magazines, on-campus videos, and radio broadcasts. But schools cannot control student publications that are not sponsored or funded by the school, not done as part of a class or school project, or that are done on a student’s own time with their own resources. *See, e.g., Burt v. Barker*, 861 F.2d 1149 (9th Cir. 1988); *Fujishima v. Bd. of Ed.*, 160 F.2d 1355 (7th Cir. 1972); *Eisner v. Stanford Bd. of Ed.*, 440 F.2d 803 (2d Cir. 1971).

RELIGIOUS BELIEFS AND ACCOMMODATIONS

Free Exercise Clause: Under the First Amendment’s Free Exercise Clause, students have the right to worship as they see fit, with only limited restrictions. This means that while at school, students are free to practice their religion or nonreligion and to express themselves religiously without interference by school officials. Students may, for example, wear religious attire or clothing with religious messaging to school; post religious messages or images on their lockers; or bring religious materials, including religious texts or objects, to school. School officials may not, for instance, require students to remove their hijab, yarmulke, or other head covering, as it substantially burdens the practice of the student’s religion. *See, e.g., Va. Code § 22.1-203.1 et seq.; VIRGINIA STATE BOARD OF EDUCATION, GUIDELINES CONCERNING RELIGIOUS ACTIVITY IN THE PUBLIC SCHOOLS* (1995).

Establishment Clause: Under the First Amendment’s Establishment Clause, school officials cannot favor one religion over another or favor religion over nonbelief. In practice, this means that school officials and teachers cannot conduct prayer or bible-reading sessions, organize or participate in student-led prayer, or hold a prayer at graduation or sporting events, even when participation is voluntary. *See, e.g., Abington Sch. Dist. v. Schempp*, 374 U.S. 203 (1963); *Engel v. Vitale*, 370 U.S. 421 (1962); *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 308 (2000); *Lee v. Weisman*, 505 U.S. 577 (1992). Teachers cannot lead students in devotional activities or encourage student participation in religious activity before or after school, during class, or at school-sponsored activities. In fact, in the public-school context, the Supreme Court has invalidated almost every instance of school- or teacher-sponsored religious expression. Under Virginia law, school boards are permitted to establish a daily observance of one minute of silence, but the school board must be careful to ensure that its policy has secular justifications and is not merely a pretense to encourage prayer. *See, e.g., Va. Code § 22.1-203; VIRGINIA STATE BOARD OF EDUCATION, GUIDELINES CONCERNING RELIGIOUS ACTIVITY IN THE PUBLIC SCHOOLS* (1995).

RIGHTS OF LGBTQ STUDENTS

Cultivating a Safe Environment: Bullying of lesbian, gay, bisexual, transgender, and queer (“LGBTQ”) students has been documented as pervasive at many schools and is all too often ignored, or even encouraged, by school officials. LGBTQ students have a right to live their authentic lives and express themselves at school. Students have a right to be out of the closet at school, and conversely, public schools are not allowed to “out” students publicly. School officials and administrators must ensure they are creating a safe learning environment and protecting LGBTQ students from bullying and harassment. *See, e.g., Title IX, 20 U.S.C. § 1681* (schools may be liable if they act with deliberate indifference in failing to protect students from severe harassment on the basis of sex).



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Dr. James Thornton
Isle of Wight County
820 West Main Street
Smithfield, VA 23430

RE: Students' Rights Reminder for the 2019-2020 Academic Year

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Student Publications: Schools may review and control the content of school sponsored student publications including student newspapers, yearbooks, literary magazines, on-campus videos, and radio broadcasts. But schools cannot control student publications that are not sponsored or funded by the school, not done as part of a class or school project, or that are done on a student’s own time with their own resources. *See, e.g., Burt v. Barker*, 861 F.2d 1149 (9th Cir. 1988); *Fujishima v. Bd. of Ed.*, 160 F.2d 1355 (7th Cir. 1972); *Eisner v. Stanford Bd. of Ed.*, 440 F.2d 803 (2d Cir. 1971).

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RIGHTS OF LGBTQ STUDENTS

Cultivating a Safe Environment: Bullying of lesbian, gay, bisexual, transgender, and queer (“LGBTQ”) students has been documented as pervasive at many schools and is all too often ignored, or even encouraged, by school officials. LGBTQ students have a right to live their authentic lives and express themselves at school. Students have a right to be out of the closet at school, and conversely, public schools are not allowed to “out” students publicly. School officials and administrators must ensure they are creating a safe learning environment and protecting LGBTQ students from bullying and harassment. *See, e.g., Title IX, 20 U.S.C. § 1681* (schools may be liable if they act with deliberate indifference in failing to protect students from severe harassment on the basis of sex).



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Gender Markers, Pronouns, and Student Records: Students should be addressed using their preferred names and pronouns. Refusing to do so, or refusing to update the gender markers on a student’s records when provided with appropriate documentation, may be considered a form of sex-based discrimination under federal law. *See Grimm v. Gloucester County Sch. Bd.*, Civil No. 4:15-cv-52, 2019 U.S. Dist. Lexis 138246 (E.D. Va. Aug. 9, 2019). Likewise, a student’s right to privacy includes a student’s sexual orientation or gender identity. It is against the law for school officials to disclose or compel students to disclose this information, even if the student appears open about their sexual orientation or gender identity. *See C.N. v. Wolf*, 410 F. Supp. 2d 894, 903 (C.D. Cal. 2005).



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Due Process: The U.S. Constitution requires that students receive due process before disciplinary measures are imposed. This means that school officials must follow certain procedures before they can suspend or expel students from school. Students are generally entitled to receive notice prior to any suspension or expulsion. The notice must include the facts concerning the suspension or expulsion, and the basis for any accusations. The notice must also provide students an opportunity to explain their side. *See, e.g., Goss v. Lopez*, 419 U.S. 565 (1975). For Virginia’s specific procedural requirements, see Va. Code § 22.1-276.01 *et seq.*

Corporal Punishment: Corporal or physical punishment of students is strictly prohibited by Virginia law. *See* Va. Code § 22.1-279.1.

School Resource Officers: School Resource Officers (“SROs”) can protect students from outside danger, but often punish minor behaviors through ticketing and arrests. Law enforcement intervention should typically be a last resort for minor violations best handled by schools as discipline issues. For additional resources on how to limit disproportionate school-based arrests or referrals to law enforcement, visit the Model Guidance for Positive, Preventative Code of Student Conduct Policy and Alternatives to Suspension, available at http://www.doe.virginia.gov/support/student_conduct/index.shtml.



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Students with disabilities are also provided with protections under Section 504 of the Rehabilitation Act of 1974 (“Section 504”) and Title II of the Americans with Disabilities Act (“ADA”). Section 504 and the ADA prohibit discrimination against students with disabilities. This means that schools are prohibited by federal law from denying students with disabilities equal access to academic courses, field trips, extracurricular activities, school technology, and health services. School officials also have a duty to ensure that students with disabilities are not being discriminated against by being denied necessary accommodations. Restricting access to educational activities and opportunities, ignoring harassment and bullying, and failing to train staff on compliance with these laws is also prohibited under Section 504 and the ADA. *See also* Va. Code § 22.1-213 *et seq.*

RIGHTS OF IMMIGRANT STUDENTS

Schools cannot discriminate against students on the basis of race, color, or national origin. This includes discriminating against students on the basis of their immigration status. Undocumented students have a right to a free public education in your school district regardless of their immigration status, and schools cannot deny students of this right. *See, e.g., Plyler v. Doe*, 457 U.S. 202 (1982). Likewise, schools are not permitted to deny enrollment to a student based on their undocumented status; treat a student differently to determine residency; make inquiries of students or parents that may expose their undocumented status; require social security numbers from parents or students for purposes of enrollment; or engage in any other practices which may chill the right of access to school. Schools cannot turn away students with limited English proficiency; they must be provided with language instruction. *See, e.g., Lau v. Nichols*, 414 U.S. 563 (1974).

School officials should not allow immigration enforcement actions on school grounds without a judicial warrant based on probable cause that a criminal violation of the immigration laws has occurred. Schools should not call immigration authorities on students or consent to any immigration enforcement on school grounds without a criminal warrant. There is no state law requiring any state or local official to contact immigration officials nor any state or federal law prohibiting adoption of a policy that protects students and teachers from immigration action in the absence of a judicial criminal warrant.

RIGHTS OF PREGNANT STUDENTS

Schools are prohibited from excluding pregnant students and students with children under Title IX of the Education Amendments of 1972. This means that schools must also ensure that pregnant students or students with children have access to educational instruction, school activities, and reasonable accommodations, to the same extent that students with temporary medical conditions are given access, including the ability to make up missed classwork and learn in a safe, nonjudgmental environment. Schools are also not allowed to punish students who choose to terminate a pregnancy or to reveal a student's private medical information.



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Dr. Olwen Herron
James City County
PO Box 8783
Williamsburg, VA 23187

RE: Students' Rights Reminder for the 2019-2020 Academic Year

Dear Superintendent,

As our communities prepare for the new academic year and students head back to school, it is important to be aware of the key issues affecting Virginia's students and their rights. Being aware of students' rights under state and federal law can help school officials avoid any potential legal complications and contribute to a positive learning environment that will allow each student to thrive.



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Federal and state laws afford children enrolled in school protection from discrimination and harassment based on race, color, religion, sex, national origin, or disability. Schools are responsible for ensuring these rights are protected and for promoting a safe school atmosphere. Additionally, schools are responsible for ensuring that students' right to free speech is respected and that the freedom to practice their religion—or no religion at all— is upheld.

Summarized below you will find information regarding: student speech rights; the Pledge of Allegiance; censorship; religious beliefs and accommodations; the rights of students who identify as LGBTQ; discipline and arrests; the rights of students with disabilities; the rights of students who are immigrants; and the rights of students who are pregnant.

We hope this information will help your school district understand the rights of students in schools and guide you in taking actions that ensure student rights are protected in a safe and supportive environment. Please do not hesitate to contact the ACLU of Virginia if you have any questions about these issues or if we can be of any assistance to you in evaluating and formulating school policy on any of these matters. We can be reached at (804) 644-8022 or acluva@acluva.org.

Very truly yours,

A handwritten signature in blue ink, which appears to read "Claire G. Gastañaga". The signature is fluid and cursive.

Claire G. Gastañaga
Executive Director



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STUDENT SPEECH RIGHTS

The First Amendment ensures that students cannot be punished for exercising free speech rights, even if administrators do not approve of their message. In the landmark Supreme Court case *Tinker v. Des Moines Independent Community School District*, the ACLU successfully challenged a school district's decision to suspend three students for wearing armbands in protest of the Vietnam War. 393 U.S. 503 (1969). The court declared that students and teachers do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." *Id.* at 506. Over the years, the ACLU has also successfully defended the right of students to wear an anti-abortion armband, a pro-LGBTQ t-shirt, and shirts critical of political figures. Schools may not discipline students for expressing an idea or political viewpoint in class or during school activities, as long as it does not cause a substantial disruption to the school environment.

It is true that the constitutional rights of students in public school are not the same as those of adults exercising First Amendment rights on public streets. Students' speech rights may be limited by reasonable time, place, and manner restrictions because of the unique characteristics of the school environment. A school may limit student speech, for example, through reasonable school-wide policies against cyberbullying. Additionally, schools may prohibit vulgar or offensive speech that is inconsistent with the "fundamental values of public school education." *Bethel Sch. Dist. No. 43 v. Fraser*, 478 U.S. 675, 685-86 (1986).

School officials should take care, however, not to define peaceful assembly as behavior that causes a substantial disruption to school activities. If students engage in a walkout, school officials may choose to discipline students for missing class but may not engage in harsher punishment because of the message or political nature of the action. School officials must not draw distinctions based on the content of a student's speech or expressive activity in imposing discipline.

PLEDGE OF ALLEGIANCE

Schools cannot punish students for refusing to salute the flag or say the Pledge of Allegiance. *W.Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624 (1943); *Sherman v. Comm. Consol. Sch. Dist. 21*, 980 F.2d 437 (7th Cir. 1992). School officials also cannot force students to stand during the Pledge of Allegiance or leave the room if a student refuses to recite the Pledge. *See* Va. Code § 22.1-202(C) ("[N]o student shall be compelled to recite the Pledge if he, his parent or legal guardian objects on religious, philosophical or other grounds to his participating in this exercise.")

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Dr. Robert B. Benson
King George County
P.O. Box 1239
King George, VA 22485

RE: Students' Rights Reminder for the 2019-2020 Academic Year

Dear Superintendent,

As our communities prepare for the new academic year and students head back to school, it is important to be aware of the key issues affecting Virginia's students and their rights. Being aware of students' rights under state and federal law can help school officials avoid any potential legal complications and contribute to a positive learning environment that will allow each student to thrive.



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Summarized below you will find information regarding: student speech rights; the Pledge of Allegiance; censorship; religious beliefs and accommodations; the rights of students who identify as LGBTQ; discipline and arrests; the rights of students with disabilities; the rights of students who are immigrants; and the rights of students who are pregnant.

We hope this information will help your school district understand the rights of students in schools and guide you in taking actions that ensure student rights are protected in a safe and supportive environment. Please do not hesitate to contact the ACLU of Virginia if you have any questions about these issues or if we can be of any assistance to you in evaluating and formulating school policy on any of these matters. We can be reached at (804) 644-8022 or acluva@acluva.org.

Very truly yours,

A handwritten signature in blue ink, which appears to read "Claire G. Gastañaga". The signature is fluid and cursive.

Claire G. Gastañaga
Executive Director



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STUDENT SPEECH RIGHTS

The First Amendment ensures that students cannot be punished for exercising free speech rights, even if administrators do not approve of their message. In the landmark Supreme Court case *Tinker v. Des Moines Independent Community School District*, the ACLU successfully challenged a school district's decision to suspend three students for wearing armbands in protest of the Vietnam War. 393 U.S. 503 (1969). The court declared that students and teachers do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." *Id.* at 506. Over the years, the ACLU has also successfully defended the right of students to wear an anti-abortion armband, a pro-LGBTQ t-shirt, and shirts critical of political figures. Schools may not discipline students for expressing an idea or political viewpoint in class or during school activities, as long as it does not cause a substantial disruption to the school environment.

It is true that the constitutional rights of students in public school are not the same as those of adults exercising First Amendment rights on public streets. Students' speech rights may be limited by reasonable time, place, and manner restrictions because of the unique characteristics of the school environment. A school may limit student speech, for example, through reasonable school-wide policies against cyberbullying. Additionally, schools may prohibit vulgar or offensive speech that is inconsistent with the "fundamental values of public school education." *Bethel Sch. Dist. No. 43 v. Fraser*, 478 U.S. 675, 685-86 (1986).

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Cultivating a Safe Environment: Bullying of lesbian, gay, bisexual, transgender, and queer (“LGBTQ”) students has been documented as pervasive at many schools and is all too often ignored, or even encouraged, by school officials. LGBTQ students have a right to live their authentic lives and express themselves at school. Students have a right to be out of the closet at school, and conversely, public schools are not allowed to “out” students publicly. School officials and administrators must ensure they are creating a safe learning environment and protecting LGBTQ students from bullying and harassment. *See, e.g., Title IX, 20 U.S.C. § 1681* (schools may be liable if they act with deliberate indifference in failing to protect students from severe harassment on the basis of sex).



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DISCIPLINE AND ARRESTS

Generally: School discipline policies and practices should be fair and equitable and should prioritize prevention and intervention rather than harsh punishments like suspension, expulsion, and referral to law enforcement. The goal of discipline should be to teach appropriate behaviors and minimize the time students spend out of class. In Spring 2015, the Center for Public Integrity released a study finding that Virginia led the country in schools referring students to law enforcement, a phenomenon known as the “school-to-prison pipeline.” Additional studies conducted by the Virginia Department of Education found that African American students and students with disabilities were disproportionately represented in both suspensions and referrals to law enforcement throughout Virginia schools. These disparities open up school districts to potential legal challenges for race and disability discrimination under federal civil rights laws. *See, e.g.*, Complaint against Richmond Public Schools, available at <https://acluva.org/en/cases/equal-treatment-richmond-public-school-students>. In order to avoid potential legal problems, and to provide a more equitable school environment, school officials should reevaluate and revise their current discipline policies and practices to create a more positive and preventative approach to student conduct. The Virginia Board of Education has provided a blueprint for schools to use in revising their outdated practices – the Model Guidance for Positive, Preventative Code of Student Conduct Policy and Alternatives to Suspension, available at http://www.doe.virginia.gov/support/student_conduct/index.shtml.

Due Process: The U.S. Constitution requires that students receive due process before disciplinary measures are imposed. This means that school officials must follow certain procedures before they can suspend or expel students from school. Students are generally entitled to receive notice prior to any suspension or expulsion. The notice must include the facts concerning the suspension or expulsion, and the basis for any accusations. The notice must also provide students an opportunity to explain their side. *See, e.g., Goss v. Lopez*, 419 U.S. 565 (1975). For Virginia’s specific procedural requirements, see Va. Code § 22.1-276.01 *et seq.*

Corporal Punishment: Corporal or physical punishment of students is strictly prohibited by Virginia law. *See* Va. Code § 22.1-279.1.

School Resource Officers: School Resource Officers (“SROs”) can protect students from outside danger, but often punish minor behaviors through ticketing and arrests. Law enforcement intervention should typically be a last resort for minor violations best handled by schools as discipline issues. For additional resources on how to limit disproportionate school-based arrests or referrals to law enforcement, visit the Model Guidance for Positive, Preventative Code of Student Conduct Policy and Alternatives to Suspension, available at http://www.doe.virginia.gov/support/student_conduct/index.shtml.



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RIGHTS OF STUDENTS WITH DISABILITIES

Students with disabilities are provided legal protections under several federal laws. The Individuals with Disabilities Education Act (“IDEA”) requires that public schools provide eligible students with disabilities a “free, appropriate public education” in the least restrictive environment. *See* 20 U.S.C. § 1400 *et seq.* As part of the IDEA, schools must affirmatively locate, identify, and evaluate children in their district for special education and related services, a process known as “child find.” Parents may also request an evaluation at any time in writing or by speaking to a teacher or administrator, and the school district must respond to the parent’s request. Schools must educate students with disabilities in the least restrictive setting possible, with an emphasis on inclusion and integration in the regular education classroom where feasible. Additionally, students receiving special education services under the IDEA, as well as students suspected of being eligible to receive services, are entitled to certain protections and safeguards in the school discipline process. *See* 34 C.F.R. § 300.530 *et seq.*

Students with disabilities are also provided with protections under Section 504 of the Rehabilitation Act of 1974 (“Section 504”) and Title II of the Americans with Disabilities Act (“ADA”). Section 504 and the ADA prohibit discrimination against students with disabilities. This means that schools are prohibited by federal law from denying students with disabilities equal access to academic courses, field trips, extracurricular activities, school technology, and health services. School officials also have a duty to ensure that students with disabilities are not being discriminated against by being denied necessary accommodations. Restricting access to educational activities and opportunities, ignoring harassment and bullying, and failing to train staff on compliance with these laws is also prohibited under Section 504 and the ADA. *See also* Va. Code § 22.1-213 *et seq.*

RIGHTS OF IMMIGRANT STUDENTS

Schools cannot discriminate against students on the basis of race, color, or national origin. This includes discriminating against students on the basis of their immigration status. Undocumented students have a right to a free public education in your school district regardless of their immigration status, and schools cannot deny students of this right. *See, e.g., Plyler v. Doe*, 457 U.S. 202 (1982). Likewise, schools are not permitted to deny enrollment to a student based on their undocumented status; treat a student differently to determine residency; make inquiries of students or parents that may expose their undocumented status; require social security numbers from parents or students for purposes of enrollment; or engage in any other practices which may chill the right of access to school. Schools cannot turn away students with limited English proficiency; they must be provided with language instruction. *See, e.g., Lau v. Nichols*, 414 U.S. 563 (1974).

School officials should not allow immigration enforcement actions on school grounds without a judicial warrant based on probable cause that a criminal violation of the immigration laws has occurred. Schools should not call immigration authorities on students or consent to any immigration enforcement on school grounds without a criminal warrant. There is no state law requiring any state or local official to contact immigration officials nor any state or federal law prohibiting adoption of a policy that protects students and teachers from immigration action in the absence of a judicial criminal warrant.

RIGHTS OF PREGNANT STUDENTS

Schools are prohibited from excluding pregnant students and students with children under Title IX of the Education Amendments of 1972. This means that schools must also ensure that pregnant students or students with children have access to educational instruction, school activities, and reasonable accommodations, to the same extent that students with temporary medical conditions are given access, including the ability to make up missed classwork and learn in a safe, nonjudgmental environment. Schools are also not allowed to punish students who choose to terminate a pregnancy or to reveal a student's private medical information.



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Dr. David O White
King William County
PO Box 185
King William, VA 23086

RE: Students' Rights Reminder for the 2019-2020 Academic Year

Dear Superintendent,

As our communities prepare for the new academic year and students head back to school, it is important to be aware of the key issues affecting Virginia's students and their rights. Being aware of students' rights under state and federal law can help school officials avoid any potential legal complications and contribute to a positive learning environment that will allow each student to thrive.

Federal and state laws afford children enrolled in school protection from discrimination and harassment based on race, color, religion, sex, national origin, or disability. Schools are responsible for ensuring these rights are protected and for promoting a safe school atmosphere. Additionally, schools are responsible for ensuring that students' right to free speech is respected and that the freedom to practice their religion—or no religion at all— is upheld.

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Students with disabilities are also provided with protections under Section 504 of the Rehabilitation Act of 1974 (“Section 504”) and Title II of the Americans with Disabilities Act (“ADA”). Section 504 and the ADA prohibit discrimination against students with disabilities. This means that schools are prohibited by federal law from denying students with disabilities equal access to academic courses, field trips, extracurricular activities, school technology, and health services. School officials also have a duty to ensure that students with disabilities are not being discriminated against by being denied necessary accommodations. Restricting access to educational activities and opportunities, ignoring harassment and bullying, and failing to train staff on compliance with these laws is also prohibited under Section 504 and the ADA. *See also* Va. Code § 22.1-213 *et seq.*

RIGHTS OF IMMIGRANT STUDENTS

Schools cannot discriminate against students on the basis of race, color, or national origin. This includes discriminating against students on the basis of their immigration status. Undocumented students have a right to a free public education in your school district regardless of their immigration status, and schools cannot deny students of this right. *See, e.g., Plyler v. Doe*, 457 U.S. 202 (1982). Likewise, schools are not permitted to deny enrollment to a student based on their undocumented status; treat a student differently to determine residency; make inquiries of students or parents that may expose their undocumented status; require social security numbers from parents or students for purposes of enrollment; or engage in any other practices which may chill the right of access to school. Schools cannot turn away students with limited English proficiency; they must be provided with language instruction. *See, e.g., Lau v. Nichols*, 414 U.S. 563 (1974).

School officials should not allow immigration enforcement actions on school grounds without a judicial warrant based on probable cause that a criminal violation of the immigration laws has occurred. Schools should not call immigration authorities on students or consent to any immigration enforcement on school grounds without a criminal warrant. There is no state law requiring any state or local official to contact immigration officials nor any state or federal law prohibiting adoption of a policy that protects students and teachers from immigration action in the absence of a judicial criminal warrant.

RIGHTS OF PREGNANT STUDENTS

Schools are prohibited from excluding pregnant students and students with children under Title IX of the Education Amendments of 1972. This means that schools must also ensure that pregnant students or students with children have access to educational instruction, school activities, and reasonable accommodations, to the same extent that students with temporary medical conditions are given access, including the ability to make up missed classwork and learn in a safe, nonjudgmental environment. Schools are also not allowed to punish students who choose to terminate a pregnancy or to reveal a student's private medical information.



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Dr. Carol B. Carter
King and Queen County
P.O. Box 97
242 Allens Circle Rt 681
King And Queen CH, VA 23085

RE: Students' Rights Reminder for the 2019-2020 Academic Year

Dear Superintendent,

As our communities prepare for the new academic year and students head back to school, it is important to be aware of the key issues affecting Virginia's students and their rights. Being aware of students' rights under state and federal law can help school officials avoid any potential legal complications and contribute to a positive learning environment that will allow each student to thrive.

Federal and state laws afford children enrolled in school protection from discrimination and harassment based on race, color, religion, sex, national origin, or disability. Schools are responsible for ensuring these rights are protected and for promoting a safe school atmosphere. Additionally, schools are responsible for ensuring that students' right to free speech is respected and that the freedom to practice their religion—or no religion at all—is upheld.

Summarized below you will find information regarding: student speech rights; the Pledge of Allegiance; censorship; religious beliefs and accommodations; the rights of students who identify as LGBTQ; discipline and arrests; the rights of students with disabilities; the rights of students who are immigrants; and the rights of students who are pregnant.

We hope this information will help your school district understand the rights of students in schools and guide you in taking actions that ensure student rights are protected in a safe and supportive environment. Please do not hesitate to contact the ACLU of Virginia if you have any questions about these issues or if we can be of any assistance to you in evaluating and formulating school policy on any of these matters. We can be reached at (804) 644-8022 or acluva@acluva.org.

Very truly yours,



Claire G. Gastañaga
Executive Director



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STUDENT SPEECH RIGHTS

The First Amendment ensures that students cannot be punished for exercising free speech rights, even if administrators do not approve of their message. In the landmark Supreme Court case *Tinker v. Des Moines Independent Community School District*, the ACLU successfully challenged a school district's decision to suspend three students for wearing armbands in protest of the Vietnam War. 393 U.S. 503 (1969). The court declared that students and teachers do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." *Id.* at 506. Over the years, the ACLU has also successfully defended the right of students to wear an anti-abortion armband, a pro-LGBTQ t-shirt, and shirts critical of political figures. Schools may not discipline students for expressing an idea or political viewpoint in class or during school activities, as long as it does not cause a substantial disruption to the school environment.

It is true that the constitutional rights of students in public school are not the same as those of adults exercising First Amendment rights on public streets. Students' speech rights may be limited by reasonable time, place, and manner restrictions because of the unique characteristics of the school environment. A school may limit student speech, for example, through reasonable school-wide policies against cyberbullying. Additionally, schools may prohibit vulgar or offensive speech that is inconsistent with the "fundamental values of public school education." *Bethel Sch. Dist. No. 43 v. Fraser*, 478 U.S. 675, 685-86 (1986).

School officials should take care, however, not to define peaceful assembly as behavior that causes a substantial disruption to school activities. If students engage in a walkout, school officials may choose to discipline students for missing class but may not engage in harsher punishment because of the message or political nature of the action. School officials must not draw distinctions based on the content of a student's speech or expressive activity in imposing discipline.

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Schools cannot punish students for refusing to salute the flag or say the Pledge of Allegiance. *W.Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624 (1943); *Sherman v. Comm. Consol. Sch. Dist. 21*, 980 F.2d 437 (7th Cir. 1992). School officials also cannot force students to stand during the Pledge of Allegiance or leave the room if a student refuses to recite the Pledge. *See* Va. Code § 22.1-202(C) ("[N]o student shall be compelled to recite the Pledge if he, his parent or legal guardian objects on religious, philosophical or other grounds to his participating in this exercise.")

CENSORSHIP

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RELIGIOUS BELIEFS AND ACCOMMODATIONS

Free Exercise Clause: Under the First Amendment’s Free Exercise Clause, students have the right to worship as they see fit, with only limited restrictions. This means that while at school, students are free to practice their religion or nonreligion and to express themselves religiously without interference by school officials. Students may, for example, wear religious attire or clothing with religious messaging to school; post religious messages or images on their lockers; or bring religious materials, including religious texts or objects, to school. School officials may not, for instance, require students to remove their hijab, yarmulke, or other head covering, as it substantially burdens the practice of the student’s religion. *See, e.g., Va. Code § 22.1-203.1 et seq.; VIRGINIA STATE BOARD OF EDUCATION, GUIDELINES CONCERNING RELIGIOUS ACTIVITY IN THE PUBLIC SCHOOLS* (1995).

Establishment Clause: Under the First Amendment’s Establishment Clause, school officials cannot favor one religion over another or favor religion over nonbelief. In practice, this means that school officials and teachers cannot conduct prayer or bible-reading sessions, organize or participate in student-led prayer, or hold a prayer at graduation or sporting events, even when participation is voluntary. *See, e.g., Abington Sch. Dist. v. Schempp*, 374 U.S. 203 (1963); *Engel v. Vitale*, 370 U.S. 421 (1962); *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 308 (2000); *Lee v. Weisman*, 505 U.S. 577 (1992). Teachers cannot lead students in devotional activities or encourage student participation in religious activity before or after school, during class, or at school-sponsored activities. In fact, in the public-school context, the Supreme Court has invalidated almost every instance of school- or teacher-sponsored religious expression. Under Virginia law, school boards are permitted to establish a daily observance of one minute of silence, but the school board must be careful to ensure that its policy has secular justifications and is not merely a pretense to encourage prayer. *See, e.g., Va. Code § 22.1-203; VIRGINIA STATE BOARD OF EDUCATION, GUIDELINES CONCERNING RELIGIOUS ACTIVITY IN THE PUBLIC SCHOOLS* (1995).

RIGHTS OF LGBTQ STUDENTS

Cultivating a Safe Environment: Bullying of lesbian, gay, bisexual, transgender, and queer (“LGBTQ”) students has been documented as pervasive at many schools and is all too often ignored, or even encouraged, by school officials. LGBTQ students have a right to live their authentic lives and express themselves at school. Students have a right to be out of the closet at school, and conversely, public schools are not allowed to “out” students publicly. School officials and administrators must ensure they are creating a safe learning environment and protecting LGBTQ students from bullying and harassment. *See, e.g., Title IX, 20 U.S.C. § 1681* (schools may be liable if they act with deliberate indifference in failing to protect students from severe harassment on the basis of sex).



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Restrooms & Locker Rooms: Transgender students must be allowed to use the restroom facilities consistent with their gender identity. Schools cannot create policies that require transgender students to use restrooms or locker rooms that do not correspond with their gender identity, and schools may not create policies that require transgender students to use single-user facilities. *See Grimm v. Gloucester County Sch. Bd.*, Civil No. 4:15-cv-52, 2019 U.S. Dist. Lexis 138246 (E.D. Va. Aug. 9, 2019).

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Discipline: The intimate relationships of LGBTQ students must be treated with equal dignity as those of heterosexual students. Policies that prohibit same-sex couples or dates from attending prom, homecoming, or other dance functions violates students’ rights under Title IX of the Education Amendments of 1972, the Equal Protection Clause of the U.S. Constitution, and the Bill of Rights of the Virginia Constitution. LGBTQ students should not be punished more severely than heterosexual students for similar behavior, including for displays of affection.

LGBTQ Student Organizations: Students interested in forming a student organization, typically called a gay-straight alliance (“GSA”), are to be treated the same as students forming any other noncurricular organization or club. *See, e.g., 20 U.S.C. § 4071(a)* (if a school allows any noncurricular student group to meet, it cannot deny other groups the same access based on the content of their interest); *Gay All. of Students v. Matthews*, 544 F.2d 162 (4th Cir. 1976).

Gender Markers, Pronouns, and Student Records: Students should be addressed using their preferred names and pronouns. Refusing to do so, or refusing to update the gender markers on a student’s records when provided with appropriate documentation, may be considered a form of sex-based discrimination under federal law. *See Grimm v. Gloucester County Sch. Bd.*, Civil No. 4:15-cv-52, 2019 U.S. Dist. Lexis 138246 (E.D. Va. Aug. 9, 2019). Likewise, a student’s right to privacy includes a student’s sexual orientation or gender identity. It is against the law for school officials to disclose or compel students to disclose this information, even if the student appears open about their sexual orientation or gender identity. *See C.N. v. Wolf*, 410 F. Supp. 2d 894, 903 (C.D. Cal. 2005).



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DISCIPLINE AND ARRESTS

Generally: School discipline policies and practices should be fair and equitable and should prioritize prevention and intervention rather than harsh punishments like suspension, expulsion, and referral to law enforcement. The goal of discipline should be to teach appropriate behaviors and minimize the time students spend out of class. In Spring 2015, the Center for Public Integrity released a study finding that Virginia led the country in schools referring students to law enforcement, a phenomenon known as the “school-to-prison pipeline.” Additional studies conducted by the Virginia Department of Education found that African American students and students with disabilities were disproportionately represented in both suspensions and referrals to law enforcement throughout Virginia schools. These disparities open up school districts to potential legal challenges for race and disability discrimination under federal civil rights laws. *See, e.g.*, Complaint against Richmond Public Schools, available at <https://acluva.org/en/cases/equal-treatment-richmond-public-school-students>. In order to avoid potential legal problems, and to provide a more equitable school environment, school officials should reevaluate and revise their current discipline policies and practices to create a more positive and preventative approach to student conduct. The Virginia Board of Education has provided a blueprint for schools to use in revising their outdated practices – the Model Guidance for Positive, Preventative Code of Student Conduct Policy and Alternatives to Suspension, available at http://www.doe.virginia.gov/support/student_conduct/index.shtml.

Due Process: The U.S. Constitution requires that students receive due process before disciplinary measures are imposed. This means that school officials must follow certain procedures before they can suspend or expel students from school. Students are generally entitled to receive notice prior to any suspension or expulsion. The notice must include the facts concerning the suspension or expulsion, and the basis for any accusations. The notice must also provide students an opportunity to explain their side. *See, e.g., Goss v. Lopez*, 419 U.S. 565 (1975). For Virginia’s specific procedural requirements, see Va. Code § 22.1-276.01 *et seq.*

Corporal Punishment: Corporal or physical punishment of students is strictly prohibited by Virginia law. *See* Va. Code § 22.1-279.1.

School Resource Officers: School Resource Officers (“SROs”) can protect students from outside danger, but often punish minor behaviors through ticketing and arrests. Law enforcement intervention should typically be a last resort for minor violations best handled by schools as discipline issues. For additional resources on how to limit disproportionate school-based arrests or referrals to law enforcement, visit the Model Guidance for Positive, Preventative Code of Student Conduct Policy and Alternatives to Suspension, available at http://www.doe.virginia.gov/support/student_conduct/index.shtml.



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RIGHTS OF PREGNANT STUDENTS

Schools are prohibited from excluding pregnant students and students with children under Title IX of the Education Amendments of 1972. This means that schools must also ensure that pregnant students or students with children have access to educational instruction, school activities, and reasonable accommodations, to the same extent that students with temporary medical conditions are given access, including the ability to make up missed classwork and learn in a safe, nonjudgmental environment. Schools are also not allowed to punish students who choose to terminate a pregnancy or to reveal a student's private medical information.



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Mr. Dan Russell
Lancaster County
P.O. Box 2000
Kilmarnock, VA 22482

RE: Students' Rights Reminder for the 2019-2020 Academic Year

Dear Superintendent,

As our communities prepare for the new academic year and students head back to school, it is important to be aware of the key issues affecting Virginia's students and their rights. Being aware of students' rights under state and federal law can help school officials avoid any potential legal complications and contribute to a positive learning environment that will allow each student to thrive.



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Summarized below you will find information regarding: student speech rights; the Pledge of Allegiance; censorship; religious beliefs and accommodations; the rights of students who identify as LGBTQ; discipline and arrests; the rights of students with disabilities; the rights of students who are immigrants; and the rights of students who are pregnant.

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Very truly yours,

A handwritten signature in blue ink, which appears to read "Claire G. Gastañaga". The signature is fluid and cursive.

Claire G. Gastañaga
Executive Director



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Gender Markers, Pronouns, and Student Records: Students should be addressed using their preferred names and pronouns. Refusing to do so, or refusing to update the gender markers on a student’s records when provided with appropriate documentation, may be considered a form of sex-based discrimination under federal law. *See Grimm v. Gloucester County Sch. Bd.*, Civil No. 4:15-cv-52, 2019 U.S. Dist. Lexis 138246 (E.D. Va. Aug. 9, 2019). Likewise, a student’s right to privacy includes a student’s sexual orientation or gender identity. It is against the law for school officials to disclose or compel students to disclose this information, even if the student appears open about their sexual orientation or gender identity. *See C.N. v. Wolf*, 410 F. Supp. 2d 894, 903 (C.D. Cal. 2005).



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DISCIPLINE AND ARRESTS

Generally: School discipline policies and practices should be fair and equitable and should prioritize prevention and intervention rather than harsh punishments like suspension, expulsion, and referral to law enforcement. The goal of discipline should be to teach appropriate behaviors and minimize the time students spend out of class. In Spring 2015, the Center for Public Integrity released a study finding that Virginia led the country in schools referring students to law enforcement, a phenomenon known as the “school-to-prison pipeline.” Additional studies conducted by the Virginia Department of Education found that African American students and students with disabilities were disproportionately represented in both suspensions and referrals to law enforcement throughout Virginia schools. These disparities open up school districts to potential legal challenges for race and disability discrimination under federal civil rights laws. *See, e.g.*, Complaint against Richmond Public Schools, available at <https://acluva.org/en/cases/equal-treatment-richmond-public-school-students>. In order to avoid potential legal problems, and to provide a more equitable school environment, school officials should reevaluate and revise their current discipline policies and practices to create a more positive and preventative approach to student conduct. The Virginia Board of Education has provided a blueprint for schools to use in revising their outdated practices – the Model Guidance for Positive, Preventative Code of Student Conduct Policy and Alternatives to Suspension, available at http://www.doe.virginia.gov/support/student_conduct/index.shtml.

Due Process: The U.S. Constitution requires that students receive due process before disciplinary measures are imposed. This means that school officials must follow certain procedures before they can suspend or expel students from school. Students are generally entitled to receive notice prior to any suspension or expulsion. The notice must include the facts concerning the suspension or expulsion, and the basis for any accusations. The notice must also provide students an opportunity to explain their side. *See, e.g., Goss v. Lopez*, 419 U.S. 565 (1975). For Virginia’s specific procedural requirements, see Va. Code § 22.1-276.01 *et seq.*

Corporal Punishment: Corporal or physical punishment of students is strictly prohibited by Virginia law. *See* Va. Code § 22.1-279.1.

School Resource Officers: School Resource Officers (“SROs”) can protect students from outside danger, but often punish minor behaviors through ticketing and arrests. Law enforcement intervention should typically be a last resort for minor violations best handled by schools as discipline issues. For additional resources on how to limit disproportionate school-based arrests or referrals to law enforcement, visit the Model Guidance for Positive, Preventative Code of Student Conduct Policy and Alternatives to Suspension, available at http://www.doe.virginia.gov/support/student_conduct/index.shtml.



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RIGHTS OF STUDENTS WITH DISABILITIES

Students with disabilities are provided legal protections under several federal laws. The Individuals with Disabilities Education Act (“IDEA”) requires that public schools provide eligible students with disabilities a “free, appropriate public education” in the least restrictive environment. *See* 20 U.S.C. § 1400 *et seq.* As part of the IDEA, schools must affirmatively locate, identify, and evaluate children in their district for special education and related services, a process known as “child find.” Parents may also request an evaluation at any time in writing or by speaking to a teacher or administrator, and the school district must respond to the parent’s request. Schools must educate students with disabilities in the least restrictive setting possible, with an emphasis on inclusion and integration in the regular education classroom where feasible. Additionally, students receiving special education services under the IDEA, as well as students suspected of being eligible to receive services, are entitled to certain protections and safeguards in the school discipline process. *See* 34 C.F.R. § 300.530 *et seq.*

Students with disabilities are also provided with protections under Section 504 of the Rehabilitation Act of 1974 (“Section 504”) and Title II of the Americans with Disabilities Act (“ADA”). Section 504 and the ADA prohibit discrimination against students with disabilities. This means that schools are prohibited by federal law from denying students with disabilities equal access to academic courses, field trips, extracurricular activities, school technology, and health services. School officials also have a duty to ensure that students with disabilities are not being discriminated against by being denied necessary accommodations. Restricting access to educational activities and opportunities, ignoring harassment and bullying, and failing to train staff on compliance with these laws is also prohibited under Section 504 and the ADA. *See also* Va. Code § 22.1-213 *et seq.*

RIGHTS OF IMMIGRANT STUDENTS

Schools cannot discriminate against students on the basis of race, color, or national origin. This includes discriminating against students on the basis of their immigration status. Undocumented students have a right to a free public education in your school district regardless of their immigration status, and schools cannot deny students of this right. *See, e.g., Plyler v. Doe*, 457 U.S. 202 (1982). Likewise, schools are not permitted to deny enrollment to a student based on their undocumented status; treat a student differently to determine residency; make inquiries of students or parents that may expose their undocumented status; require social security numbers from parents or students for purposes of enrollment; or engage in any other practices which may chill the right of access to school. Schools cannot turn away students with limited English proficiency; they must be provided with language instruction. *See, e.g., Lau v. Nichols*, 414 U.S. 563 (1974).

School officials should not allow immigration enforcement actions on school grounds without a judicial warrant based on probable cause that a criminal violation of the immigration laws has occurred. Schools should not call immigration authorities on students or consent to any immigration enforcement on school grounds without a criminal warrant. There is no state law requiring any state or local official to contact immigration officials nor any state or federal law prohibiting adoption of a policy that protects students and teachers from immigration action in the absence of a judicial criminal warrant.

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Schools are prohibited from excluding pregnant students and students with children under Title IX of the Education Amendments of 1972. This means that schools must also ensure that pregnant students or students with children have access to educational instruction, school activities, and reasonable accommodations, to the same extent that students with temporary medical conditions are given access, including the ability to make up missed classwork and learn in a safe, nonjudgmental environment. Schools are also not allowed to punish students who choose to terminate a pregnancy or to reveal a student's private medical information.



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Dr. Brian T Austin
Lee County
155 Vo Tech Drive
Jonesville, VA 24263

RE: Students' Rights Reminder for the 2019-2020 Academic Year

Dear Superintendent,

As our communities prepare for the new academic year and students head back to school, it is important to be aware of the key issues affecting Virginia's students and their rights. Being aware of students' rights under state and federal law can help school officials avoid any potential legal complications and contribute to a positive learning environment that will allow each student to thrive.



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Federal and state laws afford children enrolled in school protection from discrimination and harassment based on race, color, religion, sex, national origin, or disability. Schools are responsible for ensuring these rights are protected and for promoting a safe school atmosphere. Additionally, schools are responsible for ensuring that students' right to free speech is respected and that the freedom to practice their religion—or no religion at all— is upheld.

Summarized below you will find information regarding: student speech rights; the Pledge of Allegiance; censorship; religious beliefs and accommodations; the rights of students who identify as LGBTQ; discipline and arrests; the rights of students with disabilities; the rights of students who are immigrants; and the rights of students who are pregnant.

We hope this information will help your school district understand the rights of students in schools and guide you in taking actions that ensure student rights are protected in a safe and supportive environment. Please do not hesitate to contact the ACLU of Virginia if you have any questions about these issues or if we can be of any assistance to you in evaluating and formulating school policy on any of these matters. We can be reached at (804) 644-8022 or acluva@acluva.org.

Very truly yours,

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Claire G. Gastañaga
Executive Director



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STUDENT SPEECH RIGHTS

The First Amendment ensures that students cannot be punished for exercising free speech rights, even if administrators do not approve of their message. In the landmark Supreme Court case *Tinker v. Des Moines Independent Community School District*, the ACLU successfully challenged a school district's decision to suspend three students for wearing armbands in protest of the Vietnam War. 393 U.S. 503 (1969). The court declared that students and teachers do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." *Id.* at 506. Over the years, the ACLU has also successfully defended the right of students to wear an anti-abortion armband, a pro-LGBTQ t-shirt, and shirts critical of political figures. Schools may not discipline students for expressing an idea or political viewpoint in class or during school activities, as long as it does not cause a substantial disruption to the school environment.

It is true that the constitutional rights of students in public school are not the same as those of adults exercising First Amendment rights on public streets. Students' speech rights may be limited by reasonable time, place, and manner restrictions because of the unique characteristics of the school environment. A school may limit student speech, for example, through reasonable school-wide policies against cyberbullying. Additionally, schools may prohibit vulgar or offensive speech that is inconsistent with the "fundamental values of public school education." *Bethel Sch. Dist. No. 43 v. Fraser*, 478 U.S. 675, 685-86 (1986).

School officials should take care, however, not to define peaceful assembly as behavior that causes a substantial disruption to school activities. If students engage in a walkout, school officials may choose to discipline students for missing class but may not engage in harsher punishment because of the message or political nature of the action. School officials must not draw distinctions based on the content of a student's speech or expressive activity in imposing discipline.

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Schools cannot punish students for refusing to salute the flag or say the Pledge of Allegiance. *W.Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624 (1943); *Sherman v. Comm. Consol. Sch. Dist. 21*, 980 F.2d 437 (7th Cir. 1992). School officials also cannot force students to stand during the Pledge of Allegiance or leave the room if a student refuses to recite the Pledge. *See* Va. Code § 22.1-202(C) ("[N]o student shall be compelled to recite the Pledge if he, his parent or legal guardian objects on religious, philosophical or other grounds to his participating in this exercise.")

CENSORSHIP

Books: Banning books, removing books and materials from a classroom or library, or otherwise making it difficult for students to read a broad array of literature limits intellectual freedom. Making books and ideas unavailable based on their content or viewpoint or taking books out of schools because they are controversial, unpopular, or offensive, may violate the First Amendment. *See, e.g., Bd. of Educ. v. Pico*, 457 U.S. 853 (1982). Courts view school libraries as the main place where students exercise their freedom "to inquire, to study and to evaluate, to gain new maturity and understanding." *Id.* at 868.

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RELIGIOUS BELIEFS AND ACCOMMODATIONS

Free Exercise Clause: Under the First Amendment’s Free Exercise Clause, students have the right to worship as they see fit, with only limited restrictions. This means that while at school, students are free to practice their religion or nonreligion and to express themselves religiously without interference by school officials. Students may, for example, wear religious attire or clothing with religious messaging to school; post religious messages or images on their lockers; or bring religious materials, including religious texts or objects, to school. School officials may not, for instance, require students to remove their hijab, yarmulke, or other head covering, as it substantially burdens the practice of the student’s religion. *See, e.g., Va. Code § 22.1-203.1 et seq.; VIRGINIA STATE BOARD OF EDUCATION, GUIDELINES CONCERNING RELIGIOUS ACTIVITY IN THE PUBLIC SCHOOLS* (1995).

Establishment Clause: Under the First Amendment’s Establishment Clause, school officials cannot favor one religion over another or favor religion over nonbelief. In practice, this means that school officials and teachers cannot conduct prayer or bible-reading sessions, organize or participate in student-led prayer, or hold a prayer at graduation or sporting events, even when participation is voluntary. *See, e.g., Abington Sch. Dist. v. Schempp*, 374 U.S. 203 (1963); *Engel v. Vitale*, 370 U.S. 421 (1962); *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 308 (2000); *Lee v. Weisman*, 505 U.S. 577 (1992). Teachers cannot lead students in devotional activities or encourage student participation in religious activity before or after school, during class, or at school-sponsored activities. In fact, in the public-school context, the Supreme Court has invalidated almost every instance of school- or teacher-sponsored religious expression. Under Virginia law, school boards are permitted to establish a daily observance of one minute of silence, but the school board must be careful to ensure that its policy has secular justifications and is not merely a pretense to encourage prayer. *See, e.g., Va. Code § 22.1-203; VIRGINIA STATE BOARD OF EDUCATION, GUIDELINES CONCERNING RELIGIOUS ACTIVITY IN THE PUBLIC SCHOOLS* (1995).

RIGHTS OF LGBTQ STUDENTS

Cultivating a Safe Environment: Bullying of lesbian, gay, bisexual, transgender, and queer (“LGBTQ”) students has been documented as pervasive at many schools and is all too often ignored, or even encouraged, by school officials. LGBTQ students have a right to live their authentic lives and express themselves at school. Students have a right to be out of the closet at school, and conversely, public schools are not allowed to “out” students publicly. School officials and administrators must ensure they are creating a safe learning environment and protecting LGBTQ students from bullying and harassment. *See, e.g., Title IX, 20 U.S.C. § 1681* (schools may be liable if they act with deliberate indifference in failing to protect students from severe harassment on the basis of sex).



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Restrooms & Locker Rooms: Transgender students must be allowed to use the restroom facilities consistent with their gender identity. Schools cannot create policies that require transgender students to use restrooms or locker rooms that do not correspond with their gender identity, and schools may not create policies that require transgender students to use single-user facilities. *See Grimm v. Gloucester County Sch. Bd.*, Civil No. 4:15-cv-52, 2019 U.S. Dist. Lexis 138246 (E.D. Va. Aug. 9, 2019).

Dress Code: School officials cannot force students to wear clothing inconsistent with their gender identity. Public schools may have dress codes, but dress codes cannot treat students differently based on their gender, force students to conform to sex stereotypes, or censor particular viewpoints. Schools cannot enact dress codes based on the stereotype that only girls can wear some types of clothes and only boys wear other types of clothes. *See, e.g., U.S. v. Virginia*, 518 U.S. 515, 533 (1996) (government actors must not treat male and female students differently because of “overbroad generalizations about the different talents, capacities, or preferences of males and females.”). Schools may, for example, require that skirts be a certain length; however, they cannot require that some students wear skirts and prohibit others from doing so based on the student’s sex or gender expression. This also applies to pants, ties, or other clothing associated with traditional gender roles. And it applies to attire requirements for homecoming, prom, graduation, and other special school events.

Discipline: The intimate relationships of LGBTQ students must be treated with equal dignity as those of heterosexual students. Policies that prohibit same-sex couples or dates from attending prom, homecoming, or other dance functions violates students’ rights under Title IX of the Education Amendments of 1972, the Equal Protection Clause of the U.S. Constitution, and the Bill of Rights of the Virginia Constitution. LGBTQ students should not be punished more severely than heterosexual students for similar behavior, including for displays of affection.

LGBTQ Student Organizations: Students interested in forming a student organization, typically called a gay-straight alliance (“GSA”), are to be treated the same as students forming any other noncurricular organization or club. *See, e.g., 20 U.S.C. § 4071(a)* (if a school allows any noncurricular student group to meet, it cannot deny other groups the same access based on the content of their interest); *Gay All. of Students v. Matthews*, 544 F.2d 162 (4th Cir. 1976).

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DISCIPLINE AND ARRESTS

Generally: School discipline policies and practices should be fair and equitable and should prioritize prevention and intervention rather than harsh punishments like suspension, expulsion, and referral to law enforcement. The goal of discipline should be to teach appropriate behaviors and minimize the time students spend out of class. In Spring 2015, the Center for Public Integrity released a study finding that Virginia led the country in schools referring students to law enforcement, a phenomenon known as the “school-to-prison pipeline.” Additional studies conducted by the Virginia Department of Education found that African American students and students with disabilities were disproportionately represented in both suspensions and referrals to law enforcement throughout Virginia schools. These disparities open up school districts to potential legal challenges for race and disability discrimination under federal civil rights laws. *See, e.g.*, Complaint against Richmond Public Schools, available at <https://acluva.org/en/cases/equal-treatment-richmond-public-school-students>. In order to avoid potential legal problems, and to provide a more equitable school environment, school officials should reevaluate and revise their current discipline policies and practices to create a more positive and preventative approach to student conduct. The Virginia Board of Education has provided a blueprint for schools to use in revising their outdated practices – the Model Guidance for Positive, Preventative Code of Student Conduct Policy and Alternatives to Suspension, available at http://www.doe.virginia.gov/support/student_conduct/index.shtml.

Due Process: The U.S. Constitution requires that students receive due process before disciplinary measures are imposed. This means that school officials must follow certain procedures before they can suspend or expel students from school. Students are generally entitled to receive notice prior to any suspension or expulsion. The notice must include the facts concerning the suspension or expulsion, and the basis for any accusations. The notice must also provide students an opportunity to explain their side. *See, e.g., Goss v. Lopez*, 419 U.S. 565 (1975). For Virginia’s specific procedural requirements, see Va. Code § 22.1-276.01 *et seq.*

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RIGHTS OF PREGNANT STUDENTS

Schools are prohibited from excluding pregnant students and students with children under Title IX of the Education Amendments of 1972. This means that schools must also ensure that pregnant students or students with children have access to educational instruction, school activities, and reasonable accommodations, to the same extent that students with temporary medical conditions are given access, including the ability to make up missed classwork and learn in a safe, nonjudgmental environment. Schools are also not allowed to punish students who choose to terminate a pregnancy or to reveal a student's private medical information.



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Mrs. Rebecca Walters
Lexington
300 Diamond St
Lexington, VA 24450

RE: Students' Rights Reminder for the 2019-2020 Academic Year

Dear Superintendent,

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Claire G. Gastañaga
Executive Director



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Establishment Clause: Under the First Amendment’s Establishment Clause, school officials cannot favor one religion over another or favor religion over nonbelief. In practice, this means that school officials and teachers cannot conduct prayer or bible-reading sessions, organize or participate in student-led prayer, or hold a prayer at graduation or sporting events, even when participation is voluntary. *See, e.g., Abington Sch. Dist. v. Schempp*, 374 U.S. 203 (1963); *Engel v. Vitale*, 370 U.S. 421 (1962); *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 308 (2000); *Lee v. Weisman*, 505 U.S. 577 (1992). Teachers cannot lead students in devotional activities or encourage student participation in religious activity before or after school, during class, or at school-sponsored activities. In fact, in the public-school context, the Supreme Court has invalidated almost every instance of school- or teacher-sponsored religious expression. Under Virginia law, school boards are permitted to establish a daily observance of one minute of silence, but the school board must be careful to ensure that its policy has secular justifications and is not merely a pretense to encourage prayer. *See, e.g., Va. Code § 22.1-203; VIRGINIA STATE BOARD OF EDUCATION, GUIDELINES CONCERNING RELIGIOUS ACTIVITY IN THE PUBLIC SCHOOLS* (1995).

RIGHTS OF LGBTQ STUDENTS

Cultivating a Safe Environment: Bullying of lesbian, gay, bisexual, transgender, and queer (“LGBTQ”) students has been documented as pervasive at many schools and is all too often ignored, or even encouraged, by school officials. LGBTQ students have a right to live their authentic lives and express themselves at school. Students have a right to be out of the closet at school, and conversely, public schools are not allowed to “out” students publicly. School officials and administrators must ensure they are creating a safe learning environment and protecting LGBTQ students from bullying and harassment. *See, e.g., Title IX, 20 U.S.C. § 1681* (schools may be liable if they act with deliberate indifference in failing to protect students from severe harassment on the basis of sex).



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Discipline: The intimate relationships of LGBTQ students must be treated with equal dignity as those of heterosexual students. Policies that prohibit same-sex couples or dates from attending prom, homecoming, or other dance functions violates students’ rights under Title IX of the Education Amendments of 1972, the Equal Protection Clause of the U.S. Constitution, and the Bill of Rights of the Virginia Constitution. LGBTQ students should not be punished more severely than heterosexual students for similar behavior, including for displays of affection.

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Gender Markers, Pronouns, and Student Records: Students should be addressed using their preferred names and pronouns. Refusing to do so, or refusing to update the gender markers on a student’s records when provided with appropriate documentation, may be considered a form of sex-based discrimination under federal law. *See Grimm v. Gloucester County Sch. Bd.*, Civil No. 4:15-cv-52, 2019 U.S. Dist. Lexis 138246 (E.D. Va. Aug. 9, 2019). Likewise, a student’s right to privacy includes a student’s sexual orientation or gender identity. It is against the law for school officials to disclose or compel students to disclose this information, even if the student appears open about their sexual orientation or gender identity. *See C.N. v. Wolf*, 410 F. Supp. 2d 894, 903 (C.D. Cal. 2005).



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DISCIPLINE AND ARRESTS

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Due Process: The U.S. Constitution requires that students receive due process before disciplinary measures are imposed. This means that school officials must follow certain procedures before they can suspend or expel students from school. Students are generally entitled to receive notice prior to any suspension or expulsion. The notice must include the facts concerning the suspension or expulsion, and the basis for any accusations. The notice must also provide students an opportunity to explain their side. *See, e.g., Goss v. Lopez*, 419 U.S. 565 (1975). For Virginia’s specific procedural requirements, see Va. Code § 22.1-276.01 *et seq.*

Corporal Punishment: Corporal or physical punishment of students is strictly prohibited by Virginia law. *See* Va. Code § 22.1-279.1.

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Students with disabilities are provided legal protections under several federal laws. The Individuals with Disabilities Education Act (“IDEA”) requires that public schools provide eligible students with disabilities a “free, appropriate public education” in the least restrictive environment. *See* 20 U.S.C. § 1400 *et seq.* As part of the IDEA, schools must affirmatively locate, identify, and evaluate children in their district for special education and related services, a process known as “child find.” Parents may also request an evaluation at any time in writing or by speaking to a teacher or administrator, and the school district must respond to the parent’s request. Schools must educate students with disabilities in the least restrictive setting possible, with an emphasis on inclusion and integration in the regular education classroom where feasible. Additionally, students receiving special education services under the IDEA, as well as students suspected of being eligible to receive services, are entitled to certain protections and safeguards in the school discipline process. *See* 34 C.F.R. § 300.530 *et seq.*

Students with disabilities are also provided with protections under Section 504 of the Rehabilitation Act of 1974 (“Section 504”) and Title II of the Americans with Disabilities Act (“ADA”). Section 504 and the ADA prohibit discrimination against students with disabilities. This means that schools are prohibited by federal law from denying students with disabilities equal access to academic courses, field trips, extracurricular activities, school technology, and health services. School officials also have a duty to ensure that students with disabilities are not being discriminated against by being denied necessary accommodations. Restricting access to educational activities and opportunities, ignoring harassment and bullying, and failing to train staff on compliance with these laws is also prohibited under Section 504 and the ADA. *See also* Va. Code § 22.1-213 *et seq.*

RIGHTS OF IMMIGRANT STUDENTS

Schools cannot discriminate against students on the basis of race, color, or national origin. This includes discriminating against students on the basis of their immigration status. Undocumented students have a right to a free public education in your school district regardless of their immigration status, and schools cannot deny students of this right. *See, e.g., Plyler v. Doe*, 457 U.S. 202 (1982). Likewise, schools are not permitted to deny enrollment to a student based on their undocumented status; treat a student differently to determine residency; make inquiries of students or parents that may expose their undocumented status; require social security numbers from parents or students for purposes of enrollment; or engage in any other practices which may chill the right of access to school. Schools cannot turn away students with limited English proficiency; they must be provided with language instruction. *See, e.g., Lau v. Nichols*, 414 U.S. 563 (1974).

School officials should not allow immigration enforcement actions on school grounds without a judicial warrant based on probable cause that a criminal violation of the immigration laws has occurred. Schools should not call immigration authorities on students or consent to any immigration enforcement on school grounds without a criminal warrant. There is no state law requiring any state or local official to contact immigration officials nor any state or federal law prohibiting adoption of a policy that protects students and teachers from immigration action in the absence of a judicial criminal warrant.

RIGHTS OF PREGNANT STUDENTS

Schools are prohibited from excluding pregnant students and students with children under Title IX of the Education Amendments of 1972. This means that schools must also ensure that pregnant students or students with children have access to educational instruction, school activities, and reasonable accommodations, to the same extent that students with temporary medical conditions are given access, including the ability to make up missed classwork and learn in a safe, nonjudgmental environment. Schools are also not allowed to punish students who choose to terminate a pregnancy or to reveal a student's private medical information.



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Dr. Eric Williams
Loudoun County
21000 Education Court
Ashburn, VA 20148

RE: Students' Rights Reminder for the 2019-2020 Academic Year

Dear Superintendent,

As our communities prepare for the new academic year and students head back to school, it is important to be aware of the key issues affecting Virginia's students and their rights. Being aware of students' rights under state and federal law can help school officials avoid any potential legal complications and contribute to a positive learning environment that will allow each student to thrive.



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Federal and state laws afford children enrolled in school protection from discrimination and harassment based on race, color, religion, sex, national origin, or disability. Schools are responsible for ensuring these rights are protected and for promoting a safe school atmosphere. Additionally, schools are responsible for ensuring that students' right to free speech is respected and that the freedom to practice their religion—or no religion at all— is upheld.

Summarized below you will find information regarding: student speech rights; the Pledge of Allegiance; censorship; religious beliefs and accommodations; the rights of students who identify as LGBTQ; discipline and arrests; the rights of students with disabilities; the rights of students who are immigrants; and the rights of students who are pregnant.

We hope this information will help your school district understand the rights of students in schools and guide you in taking actions that ensure student rights are protected in a safe and supportive environment. Please do not hesitate to contact the ACLU of Virginia if you have any questions about these issues or if we can be of any assistance to you in evaluating and formulating school policy on any of these matters. We can be reached at (804) 644-8022 or acluva@acluva.org.

Very truly yours,

A handwritten signature in blue ink, which appears to read "Claire G. Gastañaga". The signature is fluid and cursive.

Claire G. Gastañaga
Executive Director



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STUDENT SPEECH RIGHTS

The First Amendment ensures that students cannot be punished for exercising free speech rights, even if administrators do not approve of their message. In the landmark Supreme Court case *Tinker v. Des Moines Independent Community School District*, the ACLU successfully challenged a school district's decision to suspend three students for wearing armbands in protest of the Vietnam War. 393 U.S. 503 (1969). The court declared that students and teachers do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." *Id.* at 506. Over the years, the ACLU has also successfully defended the right of students to wear an anti-abortion armband, a pro-LGBTQ t-shirt, and shirts critical of political figures. Schools may not discipline students for expressing an idea or political viewpoint in class or during school activities, as long as it does not cause a substantial disruption to the school environment.

It is true that the constitutional rights of students in public school are not the same as those of adults exercising First Amendment rights on public streets. Students' speech rights may be limited by reasonable time, place, and manner restrictions because of the unique characteristics of the school environment. A school may limit student speech, for example, through reasonable school-wide policies against cyberbullying. Additionally, schools may prohibit vulgar or offensive speech that is inconsistent with the "fundamental values of public school education." *Bethel Sch. Dist. No. 43 v. Fraser*, 478 U.S. 675, 685-86 (1986).

School officials should take care, however, not to define peaceful assembly as behavior that causes a substantial disruption to school activities. If students engage in a walkout, school officials may choose to discipline students for missing class but may not engage in harsher punishment because of the message or political nature of the action. School officials must not draw distinctions based on the content of a student's speech or expressive activity in imposing discipline.

PLEDGE OF ALLEGIANCE

Schools cannot punish students for refusing to salute the flag or say the Pledge of Allegiance. *W.Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624 (1943); *Sherman v. Comm. Consol. Sch. Dist. 21*, 980 F.2d 437 (7th Cir. 1992). School officials also cannot force students to stand during the Pledge of Allegiance or leave the room if a student refuses to recite the Pledge. *See* Va. Code § 22.1-202(C) ("[N]o student shall be compelled to recite the Pledge if he, his parent or legal guardian objects on religious, philosophical or other grounds to his participating in this exercise.")

CENSORSHIP

Books: Banning books, removing books and materials from a classroom or library, or otherwise making it difficult for students to read a broad array of literature limits intellectual freedom. Making books and ideas unavailable based on their content or viewpoint or taking books out of schools because they are controversial, unpopular, or offensive, may violate the First Amendment. *See, e.g., Bd. of Educ. v. Pico*, 457 U.S. 853 (1982). Courts view school libraries as the main place where students exercise their freedom "to inquire, to study and to evaluate, to gain new maturity and understanding." *Id.* at 868.

Student Publications: Schools may review and control the content of school sponsored student publications including student newspapers, yearbooks, literary magazines, on-campus videos, and radio broadcasts. But schools cannot control student publications that are not sponsored or funded by the school, not done as part of a class or school project, or that are done on a student’s own time with their own resources. *See, e.g., Burt v. Barker*, 861 F.2d 1149 (9th Cir. 1988); *Fujishima v. Bd. of Ed.*, 160 F.2d 1355 (7th Cir. 1972); *Eisner v. Stanford Bd. of Ed.*, 440 F.2d 803 (2d Cir. 1971).

RELIGIOUS BELIEFS AND ACCOMMODATIONS

Free Exercise Clause: Under the First Amendment’s Free Exercise Clause, students have the right to worship as they see fit, with only limited restrictions. This means that while at school, students are free to practice their religion or nonreligion and to express themselves religiously without interference by school officials. Students may, for example, wear religious attire or clothing with religious messaging to school; post religious messages or images on their lockers; or bring religious materials, including religious texts or objects, to school. School officials may not, for instance, require students to remove their hijab, yarmulke, or other head covering, as it substantially burdens the practice of the student’s religion. *See, e.g., Va. Code § 22.1-203.1 et seq.; VIRGINIA STATE BOARD OF EDUCATION, GUIDELINES CONCERNING RELIGIOUS ACTIVITY IN THE PUBLIC SCHOOLS* (1995).

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Mr. Doug Straley
Louisa County
953 Davis Hwy
Mineral, VA 23117

RE: Students' Rights Reminder for the 2019-2020 Academic Year

Dear Superintendent,

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Very truly yours,

A handwritten signature in blue ink, which appears to read "Claire G. Gastañaga". The signature is fluid and cursive.

Claire G. Gastañaga
Executive Director



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STUDENT SPEECH RIGHTS

The First Amendment ensures that students cannot be punished for exercising free speech rights, even if administrators do not approve of their message. In the landmark Supreme Court case *Tinker v. Des Moines Independent Community School District*, the ACLU successfully challenged a school district's decision to suspend three students for wearing armbands in protest of the Vietnam War. 393 U.S. 503 (1969). The court declared that students and teachers do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." *Id.* at 506. Over the years, the ACLU has also successfully defended the right of students to wear an anti-abortion armband, a pro-LGBTQ t-shirt, and shirts critical of political figures. Schools may not discipline students for expressing an idea or political viewpoint in class or during school activities, as long as it does not cause a substantial disruption to the school environment.

It is true that the constitutional rights of students in public school are not the same as those of adults exercising First Amendment rights on public streets. Students' speech rights may be limited by reasonable time, place, and manner restrictions because of the unique characteristics of the school environment. A school may limit student speech, for example, through reasonable school-wide policies against cyberbullying. Additionally, schools may prohibit vulgar or offensive speech that is inconsistent with the "fundamental values of public school education." *Bethel Sch. Dist. No. 43 v. Fraser*, 478 U.S. 675, 685-86 (1986).

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RIGHTS OF LGBTQ STUDENTS

Cultivating a Safe Environment: Bullying of lesbian, gay, bisexual, transgender, and queer (“LGBTQ”) students has been documented as pervasive at many schools and is all too often ignored, or even encouraged, by school officials. LGBTQ students have a right to live their authentic lives and express themselves at school. Students have a right to be out of the closet at school, and conversely, public schools are not allowed to “out” students publicly. School officials and administrators must ensure they are creating a safe learning environment and protecting LGBTQ students from bullying and harassment. *See, e.g., Title IX, 20 U.S.C. § 1681* (schools may be liable if they act with deliberate indifference in failing to protect students from severe harassment on the basis of sex).



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Discipline: The intimate relationships of LGBTQ students must be treated with equal dignity as those of heterosexual students. Policies that prohibit same-sex couples or dates from attending prom, homecoming, or other dance functions violates students’ rights under Title IX of the Education Amendments of 1972, the Equal Protection Clause of the U.S. Constitution, and the Bill of Rights of the Virginia Constitution. LGBTQ students should not be punished more severely than heterosexual students for similar behavior, including for displays of affection.

LGBTQ Student Organizations: Students interested in forming a student organization, typically called a gay-straight alliance (“GSA”), are to be treated the same as students forming any other noncurricular organization or club. *See, e.g., 20 U.S.C. § 4071(a)* (if a school allows any noncurricular student group to meet, it cannot deny other groups the same access based on the content of their interest); *Gay All. of Students v. Matthews*, 544 F.2d 162 (4th Cir. 1976).

Gender Markers, Pronouns, and Student Records: Students should be addressed using their preferred names and pronouns. Refusing to do so, or refusing to update the gender markers on a student’s records when provided with appropriate documentation, may be considered a form of sex-based discrimination under federal law. *See Grimm v. Gloucester County Sch. Bd.*, Civil No. 4:15-cv-52, 2019 U.S. Dist. Lexis 138246 (E.D. Va. Aug. 9, 2019). Likewise, a student’s right to privacy includes a student’s sexual orientation or gender identity. It is against the law for school officials to disclose or compel students to disclose this information, even if the student appears open about their sexual orientation or gender identity. *See C.N. v. Wolf*, 410 F. Supp. 2d 894, 903 (C.D. Cal. 2005).



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DISCIPLINE AND ARRESTS

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Due Process: The U.S. Constitution requires that students receive due process before disciplinary measures are imposed. This means that school officials must follow certain procedures before they can suspend or expel students from school. Students are generally entitled to receive notice prior to any suspension or expulsion. The notice must include the facts concerning the suspension or expulsion, and the basis for any accusations. The notice must also provide students an opportunity to explain their side. *See, e.g., Goss v. Lopez*, 419 U.S. 565 (1975). For Virginia’s specific procedural requirements, see Va. Code § 22.1-276.01 *et seq.*

Corporal Punishment: Corporal or physical punishment of students is strictly prohibited by Virginia law. *See* Va. Code § 22.1-279.1.

School Resource Officers: School Resource Officers (“SROs”) can protect students from outside danger, but often punish minor behaviors through ticketing and arrests. Law enforcement intervention should typically be a last resort for minor violations best handled by schools as discipline issues. For additional resources on how to limit disproportionate school-based arrests or referrals to law enforcement, visit the Model Guidance for Positive, Preventative Code of Student Conduct Policy and Alternatives to Suspension, available at http://www.doe.virginia.gov/support/student_conduct/index.shtml.



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RIGHTS OF STUDENTS WITH DISABILITIES

Students with disabilities are provided legal protections under several federal laws. The Individuals with Disabilities Education Act (“IDEA”) requires that public schools provide eligible students with disabilities a “free, appropriate public education” in the least restrictive environment. *See* 20 U.S.C. § 1400 *et seq.* As part of the IDEA, schools must affirmatively locate, identify, and evaluate children in their district for special education and related services, a process known as “child find.” Parents may also request an evaluation at any time in writing or by speaking to a teacher or administrator, and the school district must respond to the parent’s request. Schools must educate students with disabilities in the least restrictive setting possible, with an emphasis on inclusion and integration in the regular education classroom where feasible. Additionally, students receiving special education services under the IDEA, as well as students suspected of being eligible to receive services, are entitled to certain protections and safeguards in the school discipline process. *See* 34 C.F.R. § 300.530 *et seq.*

Students with disabilities are also provided with protections under Section 504 of the Rehabilitation Act of 1974 (“Section 504”) and Title II of the Americans with Disabilities Act (“ADA”). Section 504 and the ADA prohibit discrimination against students with disabilities. This means that schools are prohibited by federal law from denying students with disabilities equal access to academic courses, field trips, extracurricular activities, school technology, and health services. School officials also have a duty to ensure that students with disabilities are not being discriminated against by being denied necessary accommodations. Restricting access to educational activities and opportunities, ignoring harassment and bullying, and failing to train staff on compliance with these laws is also prohibited under Section 504 and the ADA. *See also* Va. Code § 22.1-213 *et seq.*

RIGHTS OF IMMIGRANT STUDENTS

Schools cannot discriminate against students on the basis of race, color, or national origin. This includes discriminating against students on the basis of their immigration status. Undocumented students have a right to a free public education in your school district regardless of their immigration status, and schools cannot deny students of this right. *See, e.g., Plyler v. Doe*, 457 U.S. 202 (1982). Likewise, schools are not permitted to deny enrollment to a student based on their undocumented status; treat a student differently to determine residency; make inquiries of students or parents that may expose their undocumented status; require social security numbers from parents or students for purposes of enrollment; or engage in any other practices which may chill the right of access to school. Schools cannot turn away students with limited English proficiency; they must be provided with language instruction. *See, e.g., Lau v. Nichols*, 414 U.S. 563 (1974).

School officials should not allow immigration enforcement actions on school grounds without a judicial warrant based on probable cause that a criminal violation of the immigration laws has occurred. Schools should not call immigration authorities on students or consent to any immigration enforcement on school grounds without a criminal warrant. There is no state law requiring any state or local official to contact immigration officials nor any state or federal law prohibiting adoption of a policy that protects students and teachers from immigration action in the absence of a judicial criminal warrant.

RIGHTS OF PREGNANT STUDENTS

Schools are prohibited from excluding pregnant students and students with children under Title IX of the Education Amendments of 1972. This means that schools must also ensure that pregnant students or students with children have access to educational instruction, school activities, and reasonable accommodations, to the same extent that students with temporary medical conditions are given access, including the ability to make up missed classwork and learn in a safe, nonjudgmental environment. Schools are also not allowed to punish students who choose to terminate a pregnancy or to reveal a student's private medical information.



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Mr. Charles M. Berkley Jr.
Lunenburg County
P. O. Box 710
Kenbridge, VA 23944

RE: Students' Rights Reminder for the 2019-2020 Academic Year

Dear Superintendent,

As our communities prepare for the new academic year and students head back to school, it is important to be aware of the key issues affecting Virginia's students and their rights. Being aware of students' rights under state and federal law can help school officials avoid any potential legal complications and contribute to a positive learning environment that will allow each student to thrive.



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Federal and state laws afford children enrolled in school protection from discrimination and harassment based on race, color, religion, sex, national origin, or disability. Schools are responsible for ensuring these rights are protected and for promoting a safe school atmosphere. Additionally, schools are responsible for ensuring that students' right to free speech is respected and that the freedom to practice their religion—or no religion at all—is upheld.

Summarized below you will find information regarding: student speech rights; the Pledge of Allegiance; censorship; religious beliefs and accommodations; the rights of students who identify as LGBTQ; discipline and arrests; the rights of students with disabilities; the rights of students who are immigrants; and the rights of students who are pregnant.

We hope this information will help your school district understand the rights of students in schools and guide you in taking actions that ensure student rights are protected in a safe and supportive environment. Please do not hesitate to contact the ACLU of Virginia if you have any questions about these issues or if we can be of any assistance to you in evaluating and formulating school policy on any of these matters. We can be reached at (804) 644-8022 or acluva@acluva.org.

Very truly yours,

A handwritten signature in blue ink, which appears to read "Claire G. Gastañaga". The signature is fluid and cursive.

Claire G. Gastañaga
Executive Director



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Schools cannot discriminate against students on the basis of race, color, or national origin. This includes discriminating against students on the basis of their immigration status. Undocumented students have a right to a free public education in your school district regardless of their immigration status, and schools cannot deny students of this right. *See, e.g., Plyler v. Doe*, 457 U.S. 202 (1982). Likewise, schools are not permitted to deny enrollment to a student based on their undocumented status; treat a student differently to determine residency; make inquiries of students or parents that may expose their undocumented status; require social security numbers from parents or students for purposes of enrollment; or engage in any other practices which may chill the right of access to school. Schools cannot turn away students with limited English proficiency; they must be provided with language instruction. *See, e.g., Lau v. Nichols*, 414 U.S. 563 (1974).

School officials should not allow immigration enforcement actions on school grounds without a judicial warrant based on probable cause that a criminal violation of the immigration laws has occurred. Schools should not call immigration authorities on students or consent to any immigration enforcement on school grounds without a criminal warrant. There is no state law requiring any state or local official to contact immigration officials nor any state or federal law prohibiting adoption of a policy that protects students and teachers from immigration action in the absence of a judicial criminal warrant.

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Schools are prohibited from excluding pregnant students and students with children under Title IX of the Education Amendments of 1972. This means that schools must also ensure that pregnant students or students with children have access to educational instruction, school activities, and reasonable accommodations, to the same extent that students with temporary medical conditions are given access, including the ability to make up missed classwork and learn in a safe, nonjudgmental environment. Schools are also not allowed to punish students who choose to terminate a pregnancy or to reveal a student's private medical information.



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Dr. Crystal Edwards
Lynchburg
P. O. Box 2497
Lynchburg, VA 24505

RE: Students' Rights Reminder for the 2019-2020 Academic Year

Dear Superintendent,

As our communities prepare for the new academic year and students head back to school, it is important to be aware of the key issues affecting Virginia's students and their rights. Being aware of students' rights under state and federal law can help school officials avoid any potential legal complications and contribute to a positive learning environment that will allow each student to thrive.



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Federal and state laws afford children enrolled in school protection from discrimination and harassment based on race, color, religion, sex, national origin, or disability. Schools are responsible for ensuring these rights are protected and for promoting a safe school atmosphere. Additionally, schools are responsible for ensuring that students' right to free speech is respected and that the freedom to practice their religion—or no religion at all— is upheld.

Summarized below you will find information regarding: student speech rights; the Pledge of Allegiance; censorship; religious beliefs and accommodations; the rights of students who identify as LGBTQ; discipline and arrests; the rights of students with disabilities; the rights of students who are immigrants; and the rights of students who are pregnant.

We hope this information will help your school district understand the rights of students in schools and guide you in taking actions that ensure student rights are protected in a safe and supportive environment. Please do not hesitate to contact the ACLU of Virginia if you have any questions about these issues or if we can be of any assistance to you in evaluating and formulating school policy on any of these matters. We can be reached at (804) 644-8022 or acluva@acluva.org.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Claire G. Gastañaga". The signature is fluid and cursive.

Claire G. Gastañaga
Executive Director



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STUDENT SPEECH RIGHTS

The First Amendment ensures that students cannot be punished for exercising free speech rights, even if administrators do not approve of their message. In the landmark Supreme Court case *Tinker v. Des Moines Independent Community School District*, the ACLU successfully challenged a school district's decision to suspend three students for wearing armbands in protest of the Vietnam War. 393 U.S. 503 (1969). The court declared that students and teachers do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." *Id.* at 506. Over the years, the ACLU has also successfully defended the right of students to wear an anti-abortion armband, a pro-LGBTQ t-shirt, and shirts critical of political figures. Schools may not discipline students for expressing an idea or political viewpoint in class or during school activities, as long as it does not cause a substantial disruption to the school environment.

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RIGHTS OF LGBTQ STUDENTS

Cultivating a Safe Environment: Bullying of lesbian, gay, bisexual, transgender, and queer (“LGBTQ”) students has been documented as pervasive at many schools and is all too often ignored, or even encouraged, by school officials. LGBTQ students have a right to live their authentic lives and express themselves at school. Students have a right to be out of the closet at school, and conversely, public schools are not allowed to “out” students publicly. School officials and administrators must ensure they are creating a safe learning environment and protecting LGBTQ students from bullying and harassment. *See, e.g., Title IX, 20 U.S.C. § 1681* (schools may be liable if they act with deliberate indifference in failing to protect students from severe harassment on the basis of sex).



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Discipline: The intimate relationships of LGBTQ students must be treated with equal dignity as those of heterosexual students. Policies that prohibit same-sex couples or dates from attending prom, homecoming, or other dance functions violates students’ rights under Title IX of the Education Amendments of 1972, the Equal Protection Clause of the U.S. Constitution, and the Bill of Rights of the Virginia Constitution. LGBTQ students should not be punished more severely than heterosexual students for similar behavior, including for displays of affection.

LGBTQ Student Organizations: Students interested in forming a student organization, typically called a gay-straight alliance (“GSA”), are to be treated the same as students forming any other noncurricular organization or club. *See, e.g., 20 U.S.C. § 4071(a)* (if a school allows any noncurricular student group to meet, it cannot deny other groups the same access based on the content of their interest); *Gay All. of Students v. Matthews*, 544 F.2d 162 (4th Cir. 1976).

Gender Markers, Pronouns, and Student Records: Students should be addressed using their preferred names and pronouns. Refusing to do so, or refusing to update the gender markers on a student’s records when provided with appropriate documentation, may be considered a form of sex-based discrimination under federal law. *See Grimm v. Gloucester County Sch. Bd.*, Civil No. 4:15-cv-52, 2019 U.S. Dist. Lexis 138246 (E.D. Va. Aug. 9, 2019). Likewise, a student’s right to privacy includes a student’s sexual orientation or gender identity. It is against the law for school officials to disclose or compel students to disclose this information, even if the student appears open about their sexual orientation or gender identity. *See C.N. v. Wolf*, 410 F. Supp. 2d 894, 903 (C.D. Cal. 2005).



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DISCIPLINE AND ARRESTS

Generally: School discipline policies and practices should be fair and equitable and should prioritize prevention and intervention rather than harsh punishments like suspension, expulsion, and referral to law enforcement. The goal of discipline should be to teach appropriate behaviors and minimize the time students spend out of class. In Spring 2015, the Center for Public Integrity released a study finding that Virginia led the country in schools referring students to law enforcement, a phenomenon known as the “school-to-prison pipeline.” Additional studies conducted by the Virginia Department of Education found that African American students and students with disabilities were disproportionately represented in both suspensions and referrals to law enforcement throughout Virginia schools. These disparities open up school districts to potential legal challenges for race and disability discrimination under federal civil rights laws. *See, e.g.*, Complaint against Richmond Public Schools, available at <https://acluva.org/en/cases/equal-treatment-richmond-public-school-students>. In order to avoid potential legal problems, and to provide a more equitable school environment, school officials should reevaluate and revise their current discipline policies and practices to create a more positive and preventative approach to student conduct. The Virginia Board of Education has provided a blueprint for schools to use in revising their outdated practices – the Model Guidance for Positive, Preventative Code of Student Conduct Policy and Alternatives to Suspension, available at http://www.doe.virginia.gov/support/student_conduct/index.shtml.

Due Process: The U.S. Constitution requires that students receive due process before disciplinary measures are imposed. This means that school officials must follow certain procedures before they can suspend or expel students from school. Students are generally entitled to receive notice prior to any suspension or expulsion. The notice must include the facts concerning the suspension or expulsion, and the basis for any accusations. The notice must also provide students an opportunity to explain their side. *See, e.g., Goss v. Lopez*, 419 U.S. 565 (1975). For Virginia’s specific procedural requirements, see Va. Code § 22.1-276.01 *et seq.*

Corporal Punishment: Corporal or physical punishment of students is strictly prohibited by Virginia law. *See* Va. Code § 22.1-279.1.

School Resource Officers: School Resource Officers (“SROs”) can protect students from outside danger, but often punish minor behaviors through ticketing and arrests. Law enforcement intervention should typically be a last resort for minor violations best handled by schools as discipline issues. For additional resources on how to limit disproportionate school-based arrests or referrals to law enforcement, visit the Model Guidance for Positive, Preventative Code of Student Conduct Policy and Alternatives to Suspension, available at http://www.doe.virginia.gov/support/student_conduct/index.shtml.



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RIGHTS OF STUDENTS WITH DISABILITIES

Students with disabilities are provided legal protections under several federal laws. The Individuals with Disabilities Education Act (“IDEA”) requires that public schools provide eligible students with disabilities a “free, appropriate public education” in the least restrictive environment. *See* 20 U.S.C. § 1400 *et seq.* As part of the IDEA, schools must affirmatively locate, identify, and evaluate children in their district for special education and related services, a process known as “child find.” Parents may also request an evaluation at any time in writing or by speaking to a teacher or administrator, and the school district must respond to the parent’s request. Schools must educate students with disabilities in the least restrictive setting possible, with an emphasis on inclusion and integration in the regular education classroom where feasible. Additionally, students receiving special education services under the IDEA, as well as students suspected of being eligible to receive services, are entitled to certain protections and safeguards in the school discipline process. *See* 34 C.F.R. § 300.530 *et seq.*

Students with disabilities are also provided with protections under Section 504 of the Rehabilitation Act of 1974 (“Section 504”) and Title II of the Americans with Disabilities Act (“ADA”). Section 504 and the ADA prohibit discrimination against students with disabilities. This means that schools are prohibited by federal law from denying students with disabilities equal access to academic courses, field trips, extracurricular activities, school technology, and health services. School officials also have a duty to ensure that students with disabilities are not being discriminated against by being denied necessary accommodations. Restricting access to educational activities and opportunities, ignoring harassment and bullying, and failing to train staff on compliance with these laws is also prohibited under Section 504 and the ADA. *See also* Va. Code § 22.1-213 *et seq.*

RIGHTS OF IMMIGRANT STUDENTS

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RIGHTS OF PREGNANT STUDENTS

Schools are prohibited from excluding pregnant students and students with children under Title IX of the Education Amendments of 1972. This means that schools must also ensure that pregnant students or students with children have access to educational instruction, school activities, and reasonable accommodations, to the same extent that students with temporary medical conditions are given access, including the ability to make up missed classwork and learn in a safe, nonjudgmental environment. Schools are also not allowed to punish students who choose to terminate a pregnancy or to reveal a student's private medical information.



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Ms. Anna Ruth Graham
Madison County
60 School Board Court
Madison, VA 22727

RE: Students' Rights Reminder for the 2019-2020 Academic Year

Dear Superintendent,

As our communities prepare for the new academic year and students head back to school, it is important to be aware of the key issues affecting Virginia's students and their rights. Being aware of students' rights under state and federal law can help school officials avoid any potential legal complications and contribute to a positive learning environment that will allow each student to thrive.



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Summarized below you will find information regarding: student speech rights; the Pledge of Allegiance; censorship; religious beliefs and accommodations; the rights of students who identify as LGBTQ; discipline and arrests; the rights of students with disabilities; the rights of students who are immigrants; and the rights of students who are pregnant.

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DISCIPLINE AND ARRESTS

Generally: School discipline policies and practices should be fair and equitable and should prioritize prevention and intervention rather than harsh punishments like suspension, expulsion, and referral to law enforcement. The goal of discipline should be to teach appropriate behaviors and minimize the time students spend out of class. In Spring 2015, the Center for Public Integrity released a study finding that Virginia led the country in schools referring students to law enforcement, a phenomenon known as the “school-to-prison pipeline.” Additional studies conducted by the Virginia Department of Education found that African American students and students with disabilities were disproportionately represented in both suspensions and referrals to law enforcement throughout Virginia schools. These disparities open up school districts to potential legal challenges for race and disability discrimination under federal civil rights laws. *See, e.g.*, Complaint against Richmond Public Schools, available at <https://acluva.org/en/cases/equal-treatment-richmond-public-school-students>. In order to avoid potential legal problems, and to provide a more equitable school environment, school officials should reevaluate and revise their current discipline policies and practices to create a more positive and preventative approach to student conduct. The Virginia Board of Education has provided a blueprint for schools to use in revising their outdated practices – the Model Guidance for Positive, Preventative Code of Student Conduct Policy and Alternatives to Suspension, available at http://www.doe.virginia.gov/support/student_conduct/index.shtml.

Due Process: The U.S. Constitution requires that students receive due process before disciplinary measures are imposed. This means that school officials must follow certain procedures before they can suspend or expel students from school. Students are generally entitled to receive notice prior to any suspension or expulsion. The notice must include the facts concerning the suspension or expulsion, and the basis for any accusations. The notice must also provide students an opportunity to explain their side. *See, e.g., Goss v. Lopez*, 419 U.S. 565 (1975). For Virginia’s specific procedural requirements, see Va. Code § 22.1-276.01 *et seq.*

Corporal Punishment: Corporal or physical punishment of students is strictly prohibited by Virginia law. *See* Va. Code § 22.1-279.1.

School Resource Officers: School Resource Officers (“SROs”) can protect students from outside danger, but often punish minor behaviors through ticketing and arrests. Law enforcement intervention should typically be a last resort for minor violations best handled by schools as discipline issues. For additional resources on how to limit disproportionate school-based arrests or referrals to law enforcement, visit the Model Guidance for Positive, Preventative Code of Student Conduct Policy and Alternatives to Suspension, available at http://www.doe.virginia.gov/support/student_conduct/index.shtml.



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RIGHTS OF STUDENTS WITH DISABILITIES

Students with disabilities are provided legal protections under several federal laws. The Individuals with Disabilities Education Act (“IDEA”) requires that public schools provide eligible students with disabilities a “free, appropriate public education” in the least restrictive environment. *See* 20 U.S.C. § 1400 *et seq.* As part of the IDEA, schools must affirmatively locate, identify, and evaluate children in their district for special education and related services, a process known as “child find.” Parents may also request an evaluation at any time in writing or by speaking to a teacher or administrator, and the school district must respond to the parent’s request. Schools must educate students with disabilities in the least restrictive setting possible, with an emphasis on inclusion and integration in the regular education classroom where feasible. Additionally, students receiving special education services under the IDEA, as well as students suspected of being eligible to receive services, are entitled to certain protections and safeguards in the school discipline process. *See* 34 C.F.R. § 300.530 *et seq.*

Students with disabilities are also provided with protections under Section 504 of the Rehabilitation Act of 1974 (“Section 504”) and Title II of the Americans with Disabilities Act (“ADA”). Section 504 and the ADA prohibit discrimination against students with disabilities. This means that schools are prohibited by federal law from denying students with disabilities equal access to academic courses, field trips, extracurricular activities, school technology, and health services. School officials also have a duty to ensure that students with disabilities are not being discriminated against by being denied necessary accommodations. Restricting access to educational activities and opportunities, ignoring harassment and bullying, and failing to train staff on compliance with these laws is also prohibited under Section 504 and the ADA. *See also* Va. Code § 22.1-213 *et seq.*

RIGHTS OF IMMIGRANT STUDENTS

Schools cannot discriminate against students on the basis of race, color, or national origin. This includes discriminating against students on the basis of their immigration status. Undocumented students have a right to a free public education in your school district regardless of their immigration status, and schools cannot deny students of this right. *See, e.g., Plyler v. Doe*, 457 U.S. 202 (1982). Likewise, schools are not permitted to deny enrollment to a student based on their undocumented status; treat a student differently to determine residency; make inquiries of students or parents that may expose their undocumented status; require social security numbers from parents or students for purposes of enrollment; or engage in any other practices which may chill the right of access to school. Schools cannot turn away students with limited English proficiency; they must be provided with language instruction. *See, e.g., Lau v. Nichols*, 414 U.S. 563 (1974).

School officials should not allow immigration enforcement actions on school grounds without a judicial warrant based on probable cause that a criminal violation of the immigration laws has occurred. Schools should not call immigration authorities on students or consent to any immigration enforcement on school grounds without a criminal warrant. There is no state law requiring any state or local official to contact immigration officials nor any state or federal law prohibiting adoption of a policy that protects students and teachers from immigration action in the absence of a judicial criminal warrant.

RIGHTS OF PREGNANT STUDENTS

Schools are prohibited from excluding pregnant students and students with children under Title IX of the Education Amendments of 1972. This means that schools must also ensure that pregnant students or students with children have access to educational instruction, school activities, and reasonable accommodations, to the same extent that students with temporary medical conditions are given access, including the ability to make up missed classwork and learn in a safe, nonjudgmental environment. Schools are also not allowed to punish students who choose to terminate a pregnancy or to reveal a student's private medical information.



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Dr. Kevin Newman
Manassas
P.O. Box 520
Manassas, VA 20110

RE: Students' Rights Reminder for the 2019-2020 Academic Year

Dear Superintendent,

As our communities prepare for the new academic year and students head back to school, it is important to be aware of the key issues affecting Virginia's students and their rights. Being aware of students' rights under state and federal law can help school officials avoid any potential legal complications and contribute to a positive learning environment that will allow each student to thrive.



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Federal and state laws afford children enrolled in school protection from discrimination and harassment based on race, color, religion, sex, national origin, or disability. Schools are responsible for ensuring these rights are protected and for promoting a safe school atmosphere. Additionally, schools are responsible for ensuring that students' right to free speech is respected and that the freedom to practice their religion—or no religion at all— is upheld.

Summarized below you will find information regarding: student speech rights; the Pledge of Allegiance; censorship; religious beliefs and accommodations; the rights of students who identify as LGBTQ; discipline and arrests; the rights of students with disabilities; the rights of students who are immigrants; and the rights of students who are pregnant.

We hope this information will help your school district understand the rights of students in schools and guide you in taking actions that ensure student rights are protected in a safe and supportive environment. Please do not hesitate to contact the ACLU of Virginia if you have any questions about these issues or if we can be of any assistance to you in evaluating and formulating school policy on any of these matters. We can be reached at (804) 644-8022 or acluva@acluva.org.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Claire G. Gastañaga". The signature is fluid and cursive.

Claire G. Gastañaga
Executive Director



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STUDENT SPEECH RIGHTS

The First Amendment ensures that students cannot be punished for exercising free speech rights, even if administrators do not approve of their message. In the landmark Supreme Court case *Tinker v. Des Moines Independent Community School District*, the ACLU successfully challenged a school district's decision to suspend three students for wearing armbands in protest of the Vietnam War. 393 U.S. 503 (1969). The court declared that students and teachers do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." *Id.* at 506. Over the years, the ACLU has also successfully defended the right of students to wear an anti-abortion armband, a pro-LGBTQ t-shirt, and shirts critical of political figures. Schools may not discipline students for expressing an idea or political viewpoint in class or during school activities, as long as it does not cause a substantial disruption to the school environment.

It is true that the constitutional rights of students in public school are not the same as those of adults exercising First Amendment rights on public streets. Students' speech rights may be limited by reasonable time, place, and manner restrictions because of the unique characteristics of the school environment. A school may limit student speech, for example, through reasonable school-wide policies against cyberbullying. Additionally, schools may prohibit vulgar or offensive speech that is inconsistent with the "fundamental values of public school education." *Bethel Sch. Dist. No. 43 v. Fraser*, 478 U.S. 675, 685-86 (1986).

School officials should take care, however, not to define peaceful assembly as behavior that causes a substantial disruption to school activities. If students engage in a walkout, school officials may choose to discipline students for missing class but may not engage in harsher punishment because of the message or political nature of the action. School officials must not draw distinctions based on the content of a student's speech or expressive activity in imposing discipline.

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CENSORSHIP

Books: Banning books, removing books and materials from a classroom or library, or otherwise making it difficult for students to read a broad array of literature limits intellectual freedom. Making books and ideas unavailable based on their content or viewpoint or taking books out of schools because they are controversial, unpopular, or offensive, may violate the First Amendment. *See, e.g., Bd. of Educ. v. Pico*, 457 U.S. 853 (1982). Courts view school libraries as the main place where students exercise their freedom "to inquire, to study and to evaluate, to gain new maturity and understanding." *Id.* at 868.

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RELIGIOUS BELIEFS AND ACCOMMODATIONS

Free Exercise Clause: Under the First Amendment’s Free Exercise Clause, students have the right to worship as they see fit, with only limited restrictions. This means that while at school, students are free to practice their religion or nonreligion and to express themselves religiously without interference by school officials. Students may, for example, wear religious attire or clothing with religious messaging to school; post religious messages or images on their lockers; or bring religious materials, including religious texts or objects, to school. School officials may not, for instance, require students to remove their hijab, yarmulke, or other head covering, as it substantially burdens the practice of the student’s religion. *See, e.g., Va. Code § 22.1-203.1 et seq.*; VIRGINIA STATE BOARD OF EDUCATION, GUIDELINES CONCERNING RELIGIOUS ACTIVITY IN THE PUBLIC SCHOOLS (1995).

Establishment Clause: Under the First Amendment’s Establishment Clause, school officials cannot favor one religion over another or favor religion over nonbelief. In practice, this means that school officials and teachers cannot conduct prayer or bible-reading sessions, organize or participate in student-led prayer, or hold a prayer at graduation or sporting events, even when participation is voluntary. *See, e.g., Abington Sch. Dist. v. Schempp*, 374 U.S. 203 (1963); *Engel v. Vitale*, 370 U.S. 421 (1962); *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 308 (2000); *Lee v. Weisman*, 505 U.S. 577 (1992). Teachers cannot lead students in devotional activities or encourage student participation in religious activity before or after school, during class, or at school-sponsored activities. In fact, in the public-school context, the Supreme Court has invalidated almost every instance of school- or teacher-sponsored religious expression. Under Virginia law, school boards are permitted to establish a daily observance of one minute of silence, but the school board must be careful to ensure that its policy has secular justifications and is not merely a pretense to encourage prayer. *See, e.g., Va. Code § 22.1-203*; VIRGINIA STATE BOARD OF EDUCATION, GUIDELINES CONCERNING RELIGIOUS ACTIVITY IN THE PUBLIC SCHOOLS (1995).

RIGHTS OF LGBTQ STUDENTS

Cultivating a Safe Environment: Bullying of lesbian, gay, bisexual, transgender, and queer (“LGBTQ”) students has been documented as pervasive at many schools and is all too often ignored, or even encouraged, by school officials. LGBTQ students have a right to live their authentic lives and express themselves at school. Students have a right to be out of the closet at school, and conversely, public schools are not allowed to “out” students publicly. School officials and administrators must ensure they are creating a safe learning environment and protecting LGBTQ students from bullying and harassment. *See, e.g., Title IX, 20 U.S.C. § 1681* (schools may be liable if they act with deliberate indifference in failing to protect students from severe harassment on the basis of sex).



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Restrooms & Locker Rooms: Transgender students must be allowed to use the restroom facilities consistent with their gender identity. Schools cannot create policies that require transgender students to use restrooms or locker rooms that do not correspond with their gender identity, and schools may not create policies that require transgender students to use single-user facilities. *See Grimm v. Gloucester County Sch. Bd.*, Civil No. 4:15-cv-52, 2019 U.S. Dist. Lexis 138246 (E.D. Va. Aug. 9, 2019).

Dress Code: School officials cannot force students to wear clothing inconsistent with their gender identity. Public schools may have dress codes, but dress codes cannot treat students differently based on their gender, force students to conform to sex stereotypes, or censor particular viewpoints. Schools cannot enact dress codes based on the stereotype that only girls can wear some types of clothes and only boys wear other types of clothes. *See, e.g., U.S. v. Virginia*, 518 U.S. 515, 533 (1996) (government actors must not treat male and female students differently because of “overbroad generalizations about the different talents, capacities, or preferences of males and females.”). Schools may, for example, require that skirts be a certain length; however, they cannot require that some students wear skirts and prohibit others from doing so based on the student’s sex or gender expression. This also applies to pants, ties, or other clothing associated with traditional gender roles. And it applies to attire requirements for homecoming, prom, graduation, and other special school events.

Discipline: The intimate relationships of LGBTQ students must be treated with equal dignity as those of heterosexual students. Policies that prohibit same-sex couples or dates from attending prom, homecoming, or other dance functions violates students’ rights under Title IX of the Education Amendments of 1972, the Equal Protection Clause of the U.S. Constitution, and the Bill of Rights of the Virginia Constitution. LGBTQ students should not be punished more severely than heterosexual students for similar behavior, including for displays of affection.

LGBTQ Student Organizations: Students interested in forming a student organization, typically called a gay-straight alliance (“GSA”), are to be treated the same as students forming any other noncurricular organization or club. *See, e.g., 20 U.S.C. § 4071(a)* (if a school allows any noncurricular student group to meet, it cannot deny other groups the same access based on the content of their interest); *Gay All. of Students v. Matthews*, 544 F.2d 162 (4th Cir. 1976).

Gender Markers, Pronouns, and Student Records: Students should be addressed using their preferred names and pronouns. Refusing to do so, or refusing to update the gender markers on a student’s records when provided with appropriate documentation, may be considered a form of sex-based discrimination under federal law. *See Grimm v. Gloucester County Sch. Bd.*, Civil No. 4:15-cv-52, 2019 U.S. Dist. Lexis 138246 (E.D. Va. Aug. 9, 2019). Likewise, a student’s right to privacy includes a student’s sexual orientation or gender identity. It is against the law for school officials to disclose or compel students to disclose this information, even if the student appears open about their sexual orientation or gender identity. *See C.N. v. Wolf*, 410 F. Supp. 2d 894, 903 (C.D. Cal. 2005).



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RIGHTS OF PREGNANT STUDENTS

Schools are prohibited from excluding pregnant students and students with children under Title IX of the Education Amendments of 1972. This means that schools must also ensure that pregnant students or students with children have access to educational instruction, school activities, and reasonable accommodations, to the same extent that students with temporary medical conditions are given access, including the ability to make up missed classwork and learn in a safe, nonjudgmental environment. Schools are also not allowed to punish students who choose to terminate a pregnancy or to reveal a student's private medical information.



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Dr. C. Bruce McDade
Manassas Park
One Park Center Ct Ste A
Manassas Park, VA 20111

RE: Students' Rights Reminder for the 2019-2020 Academic Year

Dear Superintendent,

As our communities prepare for the new academic year and students head back to school, it is important to be aware of the key issues affecting Virginia's students and their rights. Being aware of students' rights under state and federal law can help school officials avoid any potential legal complications and contribute to a positive learning environment that will allow each student to thrive.



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Discipline: The intimate relationships of LGBTQ students must be treated with equal dignity as those of heterosexual students. Policies that prohibit same-sex couples or dates from attending prom, homecoming, or other dance functions violates students’ rights under Title IX of the Education Amendments of 1972, the Equal Protection Clause of the U.S. Constitution, and the Bill of Rights of the Virginia Constitution. LGBTQ students should not be punished more severely than heterosexual students for similar behavior, including for displays of affection.

LGBTQ Student Organizations: Students interested in forming a student organization, typically called a gay-straight alliance (“GSA”), are to be treated the same as students forming any other noncurricular organization or club. *See, e.g., 20 U.S.C. § 4071(a)* (if a school allows any noncurricular student group to meet, it cannot deny other groups the same access based on the content of their interest); *Gay All. of Students v. Matthews*, 544 F.2d 162 (4th Cir. 1976).

Gender Markers, Pronouns, and Student Records: Students should be addressed using their preferred names and pronouns. Refusing to do so, or refusing to update the gender markers on a student’s records when provided with appropriate documentation, may be considered a form of sex-based discrimination under federal law. *See Grimm v. Gloucester County Sch. Bd.*, Civil No. 4:15-cv-52, 2019 U.S. Dist. Lexis 138246 (E.D. Va. Aug. 9, 2019). Likewise, a student’s right to privacy includes a student’s sexual orientation or gender identity. It is against the law for school officials to disclose or compel students to disclose this information, even if the student appears open about their sexual orientation or gender identity. *See C.N. v. Wolf*, 410 F. Supp. 2d 894, 903 (C.D. Cal. 2005).



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DISCIPLINE AND ARRESTS

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Due Process: The U.S. Constitution requires that students receive due process before disciplinary measures are imposed. This means that school officials must follow certain procedures before they can suspend or expel students from school. Students are generally entitled to receive notice prior to any suspension or expulsion. The notice must include the facts concerning the suspension or expulsion, and the basis for any accusations. The notice must also provide students an opportunity to explain their side. *See, e.g., Goss v. Lopez*, 419 U.S. 565 (1975). For Virginia’s specific procedural requirements, see Va. Code § 22.1-276.01 *et seq.*

Corporal Punishment: Corporal or physical punishment of students is strictly prohibited by Virginia law. *See* Va. Code § 22.1-279.1.

School Resource Officers: School Resource Officers (“SROs”) can protect students from outside danger, but often punish minor behaviors through ticketing and arrests. Law enforcement intervention should typically be a last resort for minor violations best handled by schools as discipline issues. For additional resources on how to limit disproportionate school-based arrests or referrals to law enforcement, visit the Model Guidance for Positive, Preventative Code of Student Conduct Policy and Alternatives to Suspension, available at http://www.doe.virginia.gov/support/student_conduct/index.shtml.



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RIGHTS OF STUDENTS WITH DISABILITIES

Students with disabilities are provided legal protections under several federal laws. The Individuals with Disabilities Education Act (“IDEA”) requires that public schools provide eligible students with disabilities a “free, appropriate public education” in the least restrictive environment. *See* 20 U.S.C. § 1400 *et seq.* As part of the IDEA, schools must affirmatively locate, identify, and evaluate children in their district for special education and related services, a process known as “child find.” Parents may also request an evaluation at any time in writing or by speaking to a teacher or administrator, and the school district must respond to the parent’s request. Schools must educate students with disabilities in the least restrictive setting possible, with an emphasis on inclusion and integration in the regular education classroom where feasible. Additionally, students receiving special education services under the IDEA, as well as students suspected of being eligible to receive services, are entitled to certain protections and safeguards in the school discipline process. *See* 34 C.F.R. § 300.530 *et seq.*

Students with disabilities are also provided with protections under Section 504 of the Rehabilitation Act of 1974 (“Section 504”) and Title II of the Americans with Disabilities Act (“ADA”). Section 504 and the ADA prohibit discrimination against students with disabilities. This means that schools are prohibited by federal law from denying students with disabilities equal access to academic courses, field trips, extracurricular activities, school technology, and health services. School officials also have a duty to ensure that students with disabilities are not being discriminated against by being denied necessary accommodations. Restricting access to educational activities and opportunities, ignoring harassment and bullying, and failing to train staff on compliance with these laws is also prohibited under Section 504 and the ADA. *See also* Va. Code § 22.1-213 *et seq.*

RIGHTS OF IMMIGRANT STUDENTS

Schools cannot discriminate against students on the basis of race, color, or national origin. This includes discriminating against students on the basis of their immigration status. Undocumented students have a right to a free public education in your school district regardless of their immigration status, and schools cannot deny students of this right. *See, e.g., Plyler v. Doe*, 457 U.S. 202 (1982). Likewise, schools are not permitted to deny enrollment to a student based on their undocumented status; treat a student differently to determine residency; make inquiries of students or parents that may expose their undocumented status; require social security numbers from parents or students for purposes of enrollment; or engage in any other practices which may chill the right of access to school. Schools cannot turn away students with limited English proficiency; they must be provided with language instruction. *See, e.g., Lau v. Nichols*, 414 U.S. 563 (1974).

School officials should not allow immigration enforcement actions on school grounds without a judicial warrant based on probable cause that a criminal violation of the immigration laws has occurred. Schools should not call immigration authorities on students or consent to any immigration enforcement on school grounds without a criminal warrant. There is no state law requiring any state or local official to contact immigration officials nor any state or federal law prohibiting adoption of a policy that protects students and teachers from immigration action in the absence of a judicial criminal warrant.

RIGHTS OF PREGNANT STUDENTS

Schools are prohibited from excluding pregnant students and students with children under Title IX of the Education Amendments of 1972. This means that schools must also ensure that pregnant students or students with children have access to educational instruction, school activities, and reasonable accommodations, to the same extent that students with temporary medical conditions are given access, including the ability to make up missed classwork and learn in a safe, nonjudgmental environment. Schools are also not allowed to punish students who choose to terminate a pregnancy or to reveal a student's private medical information.



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Dr. Zebedee Talley
Martinsville
PO Box 5548
Martinsville, VA 24115

RE: Students' Rights Reminder for the 2019-2020 Academic Year

Dear Superintendent,

As our communities prepare for the new academic year and students head back to school, it is important to be aware of the key issues affecting Virginia's students and their rights. Being aware of students' rights under state and federal law can help school officials avoid any potential legal complications and contribute to a positive learning environment that will allow each student to thrive.



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Federal and state laws afford children enrolled in school protection from discrimination and harassment based on race, color, religion, sex, national origin, or disability. Schools are responsible for ensuring these rights are protected and for promoting a safe school atmosphere. Additionally, schools are responsible for ensuring that students' right to free speech is respected and that the freedom to practice their religion—or no religion at all— is upheld.

Summarized below you will find information regarding: student speech rights; the Pledge of Allegiance; censorship; religious beliefs and accommodations; the rights of students who identify as LGBTQ; discipline and arrests; the rights of students with disabilities; the rights of students who are immigrants; and the rights of students who are pregnant.

We hope this information will help your school district understand the rights of students in schools and guide you in taking actions that ensure student rights are protected in a safe and supportive environment. Please do not hesitate to contact the ACLU of Virginia if you have any questions about these issues or if we can be of any assistance to you in evaluating and formulating school policy on any of these matters. We can be reached at (804) 644-8022 or acluva@acluva.org.

Very truly yours,

A handwritten signature in blue ink, which appears to read "Claire G. Gastañaga". The signature is fluid and cursive.

Claire G. Gastañaga
Executive Director



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STUDENT SPEECH RIGHTS

The First Amendment ensures that students cannot be punished for exercising free speech rights, even if administrators do not approve of their message. In the landmark Supreme Court case *Tinker v. Des Moines Independent Community School District*, the ACLU successfully challenged a school district's decision to suspend three students for wearing armbands in protest of the Vietnam War. 393 U.S. 503 (1969). The court declared that students and teachers do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." *Id.* at 506. Over the years, the ACLU has also successfully defended the right of students to wear an anti-abortion armband, a pro-LGBTQ t-shirt, and shirts critical of political figures. Schools may not discipline students for expressing an idea or political viewpoint in class or during school activities, as long as it does not cause a substantial disruption to the school environment.

It is true that the constitutional rights of students in public school are not the same as those of adults exercising First Amendment rights on public streets. Students' speech rights may be limited by reasonable time, place, and manner restrictions because of the unique characteristics of the school environment. A school may limit student speech, for example, through reasonable school-wide policies against cyberbullying. Additionally, schools may prohibit vulgar or offensive speech that is inconsistent with the "fundamental values of public school education." *Bethel Sch. Dist. No. 43 v. Fraser*, 478 U.S. 675, 685-86 (1986).

School officials should take care, however, not to define peaceful assembly as behavior that causes a substantial disruption to school activities. If students engage in a walkout, school officials may choose to discipline students for missing class but may not engage in harsher punishment because of the message or political nature of the action. School officials must not draw distinctions based on the content of a student's speech or expressive activity in imposing discipline.

PLEDGE OF ALLEGIANCE

Schools cannot punish students for refusing to salute the flag or say the Pledge of Allegiance. *W.Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624 (1943); *Sherman v. Comm. Consol. Sch. Dist. 21*, 980 F.2d 437 (7th Cir. 1992). School officials also cannot force students to stand during the Pledge of Allegiance or leave the room if a student refuses to recite the Pledge. *See* Va. Code § 22.1-202(C) ("[N]o student shall be compelled to recite the Pledge if he, his parent or legal guardian objects on religious, philosophical or other grounds to his participating in this exercise.")

CENSORSHIP

Books: Banning books, removing books and materials from a classroom or library, or otherwise making it difficult for students to read a broad array of literature limits intellectual freedom. Making books and ideas unavailable based on their content or viewpoint or taking books out of schools because they are controversial, unpopular, or offensive, may violate the First Amendment. *See, e.g., Bd. of Educ. v. Pico*, 457 U.S. 853 (1982). Courts view school libraries as the main place where students exercise their freedom "to inquire, to study and to evaluate, to gain new maturity and understanding." *Id.* at 868.

Student Publications: Schools may review and control the content of school sponsored student publications including student newspapers, yearbooks, literary magazines, on-campus videos, and radio broadcasts. But schools cannot control student publications that are not sponsored or funded by the school, not done as part of a class or school project, or that are done on a student’s own time with their own resources. *See, e.g., Burt v. Barker*, 861 F.2d 1149 (9th Cir. 1988); *Fujishima v. Bd. of Ed.*, 160 F.2d 1355 (7th Cir. 1972); *Eisner v. Stanford Bd. of Ed.*, 440 F.2d 803 (2d Cir. 1971).

RELIGIOUS BELIEFS AND ACCOMMODATIONS

Free Exercise Clause: Under the First Amendment’s Free Exercise Clause, students have the right to worship as they see fit, with only limited restrictions. This means that while at school, students are free to practice their religion or nonreligion and to express themselves religiously without interference by school officials. Students may, for example, wear religious attire or clothing with religious messaging to school; post religious messages or images on their lockers; or bring religious materials, including religious texts or objects, to school. School officials may not, for instance, require students to remove their hijab, yarmulke, or other head covering, as it substantially burdens the practice of the student’s religion. *See, e.g., Va. Code § 22.1-203.1 et seq.; VIRGINIA STATE BOARD OF EDUCATION, GUIDELINES CONCERNING RELIGIOUS ACTIVITY IN THE PUBLIC SCHOOLS* (1995).

Establishment Clause: Under the First Amendment’s Establishment Clause, school officials cannot favor one religion over another or favor religion over nonbelief. In practice, this means that school officials and teachers cannot conduct prayer or bible-reading sessions, organize or participate in student-led prayer, or hold a prayer at graduation or sporting events, even when participation is voluntary. *See, e.g., Abington Sch. Dist. v. Schempp*, 374 U.S. 203 (1963); *Engel v. Vitale*, 370 U.S. 421 (1962); *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 308 (2000); *Lee v. Weisman*, 505 U.S. 577 (1992). Teachers cannot lead students in devotional activities or encourage student participation in religious activity before or after school, during class, or at school-sponsored activities. In fact, in the public-school context, the Supreme Court has invalidated almost every instance of school- or teacher-sponsored religious expression. Under Virginia law, school boards are permitted to establish a daily observance of one minute of silence, but the school board must be careful to ensure that its policy has secular justifications and is not merely a pretense to encourage prayer. *See, e.g., Va. Code § 22.1-203; VIRGINIA STATE BOARD OF EDUCATION, GUIDELINES CONCERNING RELIGIOUS ACTIVITY IN THE PUBLIC SCHOOLS* (1995).

RIGHTS OF LGBTQ STUDENTS

Cultivating a Safe Environment: Bullying of lesbian, gay, bisexual, transgender, and queer (“LGBTQ”) students has been documented as pervasive at many schools and is all too often ignored, or even encouraged, by school officials. LGBTQ students have a right to live their authentic lives and express themselves at school. Students have a right to be out of the closet at school, and conversely, public schools are not allowed to “out” students publicly. School officials and administrators must ensure they are creating a safe learning environment and protecting LGBTQ students from bullying and harassment. *See, e.g., Title IX, 20 U.S.C. § 1681* (schools may be liable if they act with deliberate indifference in failing to protect students from severe harassment on the basis of sex).



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Mrs. Nancy B. Welch
Mathews County
PO Box 369
Mathews, VA 23109

RE: Students' Rights Reminder for the 2019-2020 Academic Year

Dear Superintendent,

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Claire G. Gastañaga
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Corporal Punishment: Corporal or physical punishment of students is strictly prohibited by Virginia law. *See* Va. Code § 22.1-279.1.

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Students with disabilities are also provided with protections under Section 504 of the Rehabilitation Act of 1974 (“Section 504”) and Title II of the Americans with Disabilities Act (“ADA”). Section 504 and the ADA prohibit discrimination against students with disabilities. This means that schools are prohibited by federal law from denying students with disabilities equal access to academic courses, field trips, extracurricular activities, school technology, and health services. School officials also have a duty to ensure that students with disabilities are not being discriminated against by being denied necessary accommodations. Restricting access to educational activities and opportunities, ignoring harassment and bullying, and failing to train staff on compliance with these laws is also prohibited under Section 504 and the ADA. *See also* Va. Code § 22.1-213 *et seq.*

RIGHTS OF IMMIGRANT STUDENTS

Schools cannot discriminate against students on the basis of race, color, or national origin. This includes discriminating against students on the basis of their immigration status. Undocumented students have a right to a free public education in your school district regardless of their immigration status, and schools cannot deny students of this right. *See, e.g., Plyler v. Doe*, 457 U.S. 202 (1982). Likewise, schools are not permitted to deny enrollment to a student based on their undocumented status; treat a student differently to determine residency; make inquiries of students or parents that may expose their undocumented status; require social security numbers from parents or students for purposes of enrollment; or engage in any other practices which may chill the right of access to school. Schools cannot turn away students with limited English proficiency; they must be provided with language instruction. *See, e.g., Lau v. Nichols*, 414 U.S. 563 (1974).

School officials should not allow immigration enforcement actions on school grounds without a judicial warrant based on probable cause that a criminal violation of the immigration laws has occurred. Schools should not call immigration authorities on students or consent to any immigration enforcement on school grounds without a criminal warrant. There is no state law requiring any state or local official to contact immigration officials nor any state or federal law prohibiting adoption of a policy that protects students and teachers from immigration action in the absence of a judicial criminal warrant.

RIGHTS OF PREGNANT STUDENTS

Schools are prohibited from excluding pregnant students and students with children under Title IX of the Education Amendments of 1972. This means that schools must also ensure that pregnant students or students with children have access to educational instruction, school activities, and reasonable accommodations, to the same extent that students with temporary medical conditions are given access, including the ability to make up missed classwork and learn in a safe, nonjudgmental environment. Schools are also not allowed to punish students who choose to terminate a pregnancy or to reveal a student's private medical information.



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Mr. Paul C Nichols
Mecklenburg County
P.O. Box 190
Boydton, VA 23917

RE: Students' Rights Reminder for the 2019-2020 Academic Year

Dear Superintendent,

As our communities prepare for the new academic year and students head back to school, it is important to be aware of the key issues affecting Virginia's students and their rights. Being aware of students' rights under state and federal law can help school officials avoid any potential legal complications and contribute to a positive learning environment that will allow each student to thrive.



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Federal and state laws afford children enrolled in school protection from discrimination and harassment based on race, color, religion, sex, national origin, or disability. Schools are responsible for ensuring these rights are protected and for promoting a safe school atmosphere. Additionally, schools are responsible for ensuring that students' right to free speech is respected and that the freedom to practice their religion—or no religion at all— is upheld.

Summarized below you will find information regarding: student speech rights; the Pledge of Allegiance; censorship; religious beliefs and accommodations; the rights of students who identify as LGBTQ; discipline and arrests; the rights of students with disabilities; the rights of students who are immigrants; and the rights of students who are pregnant.

We hope this information will help your school district understand the rights of students in schools and guide you in taking actions that ensure student rights are protected in a safe and supportive environment. Please do not hesitate to contact the ACLU of Virginia if you have any questions about these issues or if we can be of any assistance to you in evaluating and formulating school policy on any of these matters. We can be reached at (804) 644-8022 or acluva@acluva.org.

Very truly yours,

A handwritten signature in blue ink, which appears to read "Claire G. Gastañaga". The signature is fluid and cursive.

Claire G. Gastañaga
Executive Director



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STUDENT SPEECH RIGHTS

The First Amendment ensures that students cannot be punished for exercising free speech rights, even if administrators do not approve of their message. In the landmark Supreme Court case *Tinker v. Des Moines Independent Community School District*, the ACLU successfully challenged a school district's decision to suspend three students for wearing armbands in protest of the Vietnam War. 393 U.S. 503 (1969). The court declared that students and teachers do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." *Id.* at 506. Over the years, the ACLU has also successfully defended the right of students to wear an anti-abortion armband, a pro-LGBTQ t-shirt, and shirts critical of political figures. Schools may not discipline students for expressing an idea or political viewpoint in class or during school activities, as long as it does not cause a substantial disruption to the school environment.

It is true that the constitutional rights of students in public school are not the same as those of adults exercising First Amendment rights on public streets. Students' speech rights may be limited by reasonable time, place, and manner restrictions because of the unique characteristics of the school environment. A school may limit student speech, for example, through reasonable school-wide policies against cyberbullying. Additionally, schools may prohibit vulgar or offensive speech that is inconsistent with the "fundamental values of public school education." *Bethel Sch. Dist. No. 43 v. Fraser*, 478 U.S. 675, 685-86 (1986).

School officials should take care, however, not to define peaceful assembly as behavior that causes a substantial disruption to school activities. If students engage in a walkout, school officials may choose to discipline students for missing class but may not engage in harsher punishment because of the message or political nature of the action. School officials must not draw distinctions based on the content of a student's speech or expressive activity in imposing discipline.

PLEDGE OF ALLEGIANCE

Schools cannot punish students for refusing to salute the flag or say the Pledge of Allegiance. *W.Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624 (1943); *Sherman v. Comm. Consol. Sch. Dist. 21*, 980 F.2d 437 (7th Cir. 1992). School officials also cannot force students to stand during the Pledge of Allegiance or leave the room if a student refuses to recite the Pledge. *See* Va. Code § 22.1-202(C) ("[N]o student shall be compelled to recite the Pledge if he, his parent or legal guardian objects on religious, philosophical or other grounds to his participating in this exercise.")

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Dr. Peter M. Gretz
Middlesex County
P.O. Box 205
Saluda, VA 23149

RE: Students' Rights Reminder for the 2019-2020 Academic Year

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Federal and state laws afford children enrolled in school protection from discrimination and harassment based on race, color, religion, sex, national origin, or disability. Schools are responsible for ensuring these rights are protected and for promoting a safe school atmosphere. Additionally, schools are responsible for ensuring that students' right to free speech is respected and that the freedom to practice their religion—or no religion at all— is upheld.

Summarized below you will find information regarding: student speech rights; the Pledge of Allegiance; censorship; religious beliefs and accommodations; the rights of students who identify as LGBTQ; discipline and arrests; the rights of students with disabilities; the rights of students who are immigrants; and the rights of students who are pregnant.

We hope this information will help your school district understand the rights of students in schools and guide you in taking actions that ensure student rights are protected in a safe and supportive environment. Please do not hesitate to contact the ACLU of Virginia if you have any questions about these issues or if we can be of any assistance to you in evaluating and formulating school policy on any of these matters. We can be reached at (804) 644-8022 or acluva@acluva.org.

Very truly yours,



Claire G. Gastañaga
Executive Director



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STUDENT SPEECH RIGHTS

The First Amendment ensures that students cannot be punished for exercising free speech rights, even if administrators do not approve of their message. In the landmark Supreme Court case *Tinker v. Des Moines Independent Community School District*, the ACLU successfully challenged a school district's decision to suspend three students for wearing armbands in protest of the Vietnam War. 393 U.S. 503 (1969). The court declared that students and teachers do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." *Id.* at 506. Over the years, the ACLU has also successfully defended the right of students to wear an anti-abortion armband, a pro-LGBTQ t-shirt, and shirts critical of political figures. Schools may not discipline students for expressing an idea or political viewpoint in class or during school activities, as long as it does not cause a substantial disruption to the school environment.

It is true that the constitutional rights of students in public school are not the same as those of adults exercising First Amendment rights on public streets. Students' speech rights may be limited by reasonable time, place, and manner restrictions because of the unique characteristics of the school environment. A school may limit student speech, for example, through reasonable school-wide policies against cyberbullying. Additionally, schools may prohibit vulgar or offensive speech that is inconsistent with the "fundamental values of public school education." *Bethel Sch. Dist. No. 43 v. Fraser*, 478 U.S. 675, 685-86 (1986).

School officials should take care, however, not to define peaceful assembly as behavior that causes a substantial disruption to school activities. If students engage in a walkout, school officials may choose to discipline students for missing class but may not engage in harsher punishment because of the message or political nature of the action. School officials must not draw distinctions based on the content of a student's speech or expressive activity in imposing discipline.

PLEDGE OF ALLEGIANCE

Schools cannot punish students for refusing to salute the flag or say the Pledge of Allegiance. *W.Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624 (1943); *Sherman v. Comm. Consol. Sch. Dist. 21*, 980 F.2d 437 (7th Cir. 1992). School officials also cannot force students to stand during the Pledge of Allegiance or leave the room if a student refuses to recite the Pledge. *See* Va. Code § 22.1-202(C) ("[N]o student shall be compelled to recite the Pledge if he, his parent or legal guardian objects on religious, philosophical or other grounds to his participating in this exercise.")

CENSORSHIP

Books: Banning books, removing books and materials from a classroom or library, or otherwise making it difficult for students to read a broad array of literature limits intellectual freedom. Making books and ideas unavailable based on their content or viewpoint or taking books out of schools because they are controversial, unpopular, or offensive, may violate the First Amendment. *See, e.g., Bd. of Educ. v. Pico*, 457 U.S. 853 (1982). Courts view school libraries as the main place where students exercise their freedom "to inquire, to study and to evaluate, to gain new maturity and understanding." *Id.* at 868.

Student Publications: Schools may review and control the content of school sponsored student publications including student newspapers, yearbooks, literary magazines, on-campus videos, and radio broadcasts. But schools cannot control student publications that are not sponsored or funded by the school, not done as part of a class or school project, or that are done on a student’s own time with their own resources. *See, e.g., Burt v. Barker*, 861 F.2d 1149 (9th Cir. 1988); *Fujishima v. Bd. of Ed.*, 160 F.2d 1355 (7th Cir. 1972); *Eisner v. Stanford Bd. of Ed.*, 440 F.2d 803 (2d Cir. 1971).

RELIGIOUS BELIEFS AND ACCOMMODATIONS

Free Exercise Clause: Under the First Amendment’s Free Exercise Clause, students have the right to worship as they see fit, with only limited restrictions. This means that while at school, students are free to practice their religion or nonreligion and to express themselves religiously without interference by school officials. Students may, for example, wear religious attire or clothing with religious messaging to school; post religious messages or images on their lockers; or bring religious materials, including religious texts or objects, to school. School officials may not, for instance, require students to remove their hijab, yarmulke, or other head covering, as it substantially burdens the practice of the student’s religion. *See, e.g., Va. Code § 22.1-203.1 et seq.*; VIRGINIA STATE BOARD OF EDUCATION, GUIDELINES CONCERNING RELIGIOUS ACTIVITY IN THE PUBLIC SCHOOLS (1995).

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RIGHTS OF LGBTQ STUDENTS

Cultivating a Safe Environment: Bullying of lesbian, gay, bisexual, transgender, and queer (“LGBTQ”) students has been documented as pervasive at many schools and is all too often ignored, or even encouraged, by school officials. LGBTQ students have a right to live their authentic lives and express themselves at school. Students have a right to be out of the closet at school, and conversely, public schools are not allowed to “out” students publicly. School officials and administrators must ensure they are creating a safe learning environment and protecting LGBTQ students from bullying and harassment. *See, e.g., Title IX, 20 U.S.C. § 1681* (schools may be liable if they act with deliberate indifference in failing to protect students from severe harassment on the basis of sex).



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Discipline: The intimate relationships of LGBTQ students must be treated with equal dignity as those of heterosexual students. Policies that prohibit same-sex couples or dates from attending prom, homecoming, or other dance functions violates students’ rights under Title IX of the Education Amendments of 1972, the Equal Protection Clause of the U.S. Constitution, and the Bill of Rights of the Virginia Constitution. LGBTQ students should not be punished more severely than heterosexual students for similar behavior, including for displays of affection.

LGBTQ Student Organizations: Students interested in forming a student organization, typically called a gay-straight alliance (“GSA”), are to be treated the same as students forming any other noncurricular organization or club. *See, e.g., 20 U.S.C. § 4071(a)* (if a school allows any noncurricular student group to meet, it cannot deny other groups the same access based on the content of their interest); *Gay All. of Students v. Matthews*, 544 F.2d 162 (4th Cir. 1976).

Gender Markers, Pronouns, and Student Records: Students should be addressed using their preferred names and pronouns. Refusing to do so, or refusing to update the gender markers on a student’s records when provided with appropriate documentation, may be considered a form of sex-based discrimination under federal law. *See Grimm v. Gloucester County Sch. Bd.*, Civil No. 4:15-cv-52, 2019 U.S. Dist. Lexis 138246 (E.D. Va. Aug. 9, 2019). Likewise, a student’s right to privacy includes a student’s sexual orientation or gender identity. It is against the law for school officials to disclose or compel students to disclose this information, even if the student appears open about their sexual orientation or gender identity. *See C.N. v. Wolf*, 410 F. Supp. 2d 894, 903 (C.D. Cal. 2005).



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DISCIPLINE AND ARRESTS

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Due Process: The U.S. Constitution requires that students receive due process before disciplinary measures are imposed. This means that school officials must follow certain procedures before they can suspend or expel students from school. Students are generally entitled to receive notice prior to any suspension or expulsion. The notice must include the facts concerning the suspension or expulsion, and the basis for any accusations. The notice must also provide students an opportunity to explain their side. *See, e.g., Goss v. Lopez*, 419 U.S. 565 (1975). For Virginia’s specific procedural requirements, see Va. Code § 22.1-276.01 *et seq.*

Corporal Punishment: Corporal or physical punishment of students is strictly prohibited by Virginia law. *See* Va. Code § 22.1-279.1.

School Resource Officers: School Resource Officers (“SROs”) can protect students from outside danger, but often punish minor behaviors through ticketing and arrests. Law enforcement intervention should typically be a last resort for minor violations best handled by schools as discipline issues. For additional resources on how to limit disproportionate school-based arrests or referrals to law enforcement, visit the Model Guidance for Positive, Preventative Code of Student Conduct Policy and Alternatives to Suspension, available at http://www.doe.virginia.gov/support/student_conduct/index.shtml.



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RIGHTS OF STUDENTS WITH DISABILITIES

Students with disabilities are provided legal protections under several federal laws. The Individuals with Disabilities Education Act (“IDEA”) requires that public schools provide eligible students with disabilities a “free, appropriate public education” in the least restrictive environment. *See* 20 U.S.C. § 1400 *et seq.* As part of the IDEA, schools must affirmatively locate, identify, and evaluate children in their district for special education and related services, a process known as “child find.” Parents may also request an evaluation at any time in writing or by speaking to a teacher or administrator, and the school district must respond to the parent’s request. Schools must educate students with disabilities in the least restrictive setting possible, with an emphasis on inclusion and integration in the regular education classroom where feasible. Additionally, students receiving special education services under the IDEA, as well as students suspected of being eligible to receive services, are entitled to certain protections and safeguards in the school discipline process. *See* 34 C.F.R. § 300.530 *et seq.*

Students with disabilities are also provided with protections under Section 504 of the Rehabilitation Act of 1974 (“Section 504”) and Title II of the Americans with Disabilities Act (“ADA”). Section 504 and the ADA prohibit discrimination against students with disabilities. This means that schools are prohibited by federal law from denying students with disabilities equal access to academic courses, field trips, extracurricular activities, school technology, and health services. School officials also have a duty to ensure that students with disabilities are not being discriminated against by being denied necessary accommodations. Restricting access to educational activities and opportunities, ignoring harassment and bullying, and failing to train staff on compliance with these laws is also prohibited under Section 504 and the ADA. *See also* Va. Code § 22.1-213 *et seq.*

RIGHTS OF IMMIGRANT STUDENTS

Schools cannot discriminate against students on the basis of race, color, or national origin. This includes discriminating against students on the basis of their immigration status. Undocumented students have a right to a free public education in your school district regardless of their immigration status, and schools cannot deny students of this right. *See, e.g., Plyler v. Doe*, 457 U.S. 202 (1982). Likewise, schools are not permitted to deny enrollment to a student based on their undocumented status; treat a student differently to determine residency; make inquiries of students or parents that may expose their undocumented status; require social security numbers from parents or students for purposes of enrollment; or engage in any other practices which may chill the right of access to school. Schools cannot turn away students with limited English proficiency; they must be provided with language instruction. *See, e.g., Lau v. Nichols*, 414 U.S. 563 (1974).

School officials should not allow immigration enforcement actions on school grounds without a judicial warrant based on probable cause that a criminal violation of the immigration laws has occurred. Schools should not call immigration authorities on students or consent to any immigration enforcement on school grounds without a criminal warrant. There is no state law requiring any state or local official to contact immigration officials nor any state or federal law prohibiting adoption of a policy that protects students and teachers from immigration action in the absence of a judicial criminal warrant.

RIGHTS OF PREGNANT STUDENTS

Schools are prohibited from excluding pregnant students and students with children under Title IX of the Education Amendments of 1972. This means that schools must also ensure that pregnant students or students with children have access to educational instruction, school activities, and reasonable accommodations, to the same extent that students with temporary medical conditions are given access, including the ability to make up missed classwork and learn in a safe, nonjudgmental environment. Schools are also not allowed to punish students who choose to terminate a pregnancy or to reveal a student's private medical information.



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Dr. Mark Mear
Montgomery County
750 Imperial St.
Christiansburg, VA 24073

RE: Students' Rights Reminder for the 2019-2020 Academic Year

Dear Superintendent,

As our communities prepare for the new academic year and students head back to school, it is important to be aware of the key issues affecting Virginia's students and their rights. Being aware of students' rights under state and federal law can help school officials avoid any potential legal complications and contribute to a positive learning environment that will allow each student to thrive.



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Very truly yours,

A handwritten signature in blue ink, which appears to read "Claire G. Gastañaga". The signature is fluid and cursive.

Claire G. Gastañaga
Executive Director



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Students with disabilities are also provided with protections under Section 504 of the Rehabilitation Act of 1974 (“Section 504”) and Title II of the Americans with Disabilities Act (“ADA”). Section 504 and the ADA prohibit discrimination against students with disabilities. This means that schools are prohibited by federal law from denying students with disabilities equal access to academic courses, field trips, extracurricular activities, school technology, and health services. School officials also have a duty to ensure that students with disabilities are not being discriminated against by being denied necessary accommodations. Restricting access to educational activities and opportunities, ignoring harassment and bullying, and failing to train staff on compliance with these laws is also prohibited under Section 504 and the ADA. *See also* Va. Code § 22.1-213 *et seq.*

RIGHTS OF IMMIGRANT STUDENTS

Schools cannot discriminate against students on the basis of race, color, or national origin. This includes discriminating against students on the basis of their immigration status. Undocumented students have a right to a free public education in your school district regardless of their immigration status, and schools cannot deny students of this right. *See, e.g., Plyler v. Doe*, 457 U.S. 202 (1982). Likewise, schools are not permitted to deny enrollment to a student based on their undocumented status; treat a student differently to determine residency; make inquiries of students or parents that may expose their undocumented status; require social security numbers from parents or students for purposes of enrollment; or engage in any other practices which may chill the right of access to school. Schools cannot turn away students with limited English proficiency; they must be provided with language instruction. *See, e.g., Lau v. Nichols*, 414 U.S. 563 (1974).

School officials should not allow immigration enforcement actions on school grounds without a judicial warrant based on probable cause that a criminal violation of the immigration laws has occurred. Schools should not call immigration authorities on students or consent to any immigration enforcement on school grounds without a criminal warrant. There is no state law requiring any state or local official to contact immigration officials nor any state or federal law prohibiting adoption of a policy that protects students and teachers from immigration action in the absence of a judicial criminal warrant.

RIGHTS OF PREGNANT STUDENTS

Schools are prohibited from excluding pregnant students and students with children under Title IX of the Education Amendments of 1972. This means that schools must also ensure that pregnant students or students with children have access to educational instruction, school activities, and reasonable accommodations, to the same extent that students with temporary medical conditions are given access, including the ability to make up missed classwork and learn in a safe, nonjudgmental environment. Schools are also not allowed to punish students who choose to terminate a pregnancy or to reveal a student's private medical information.



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Dr. Martha Eagle
Nelson County
PO Box 276
Lovington, VA 22949

RE: Students' Rights Reminder for the 2019-2020 Academic Year

Dear Superintendent,

As our communities prepare for the new academic year and students head back to school, it is important to be aware of the key issues affecting Virginia's students and their rights. Being aware of students' rights under state and federal law can help school officials avoid any potential legal complications and contribute to a positive learning environment that will allow each student to thrive.



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Federal and state laws afford children enrolled in school protection from discrimination and harassment based on race, color, religion, sex, national origin, or disability. Schools are responsible for ensuring these rights are protected and for promoting a safe school atmosphere. Additionally, schools are responsible for ensuring that students' right to free speech is respected and that the freedom to practice their religion—or no religion at all— is upheld.

Summarized below you will find information regarding: student speech rights; the Pledge of Allegiance; censorship; religious beliefs and accommodations; the rights of students who identify as LGBTQ; discipline and arrests; the rights of students with disabilities; the rights of students who are immigrants; and the rights of students who are pregnant.

We hope this information will help your school district understand the rights of students in schools and guide you in taking actions that ensure student rights are protected in a safe and supportive environment. Please do not hesitate to contact the ACLU of Virginia if you have any questions about these issues or if we can be of any assistance to you in evaluating and formulating school policy on any of these matters. We can be reached at (804) 644-8022 or acluva@acluva.org.

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Claire G. Gastañaga
Executive Director



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STUDENT SPEECH RIGHTS

The First Amendment ensures that students cannot be punished for exercising free speech rights, even if administrators do not approve of their message. In the landmark Supreme Court case *Tinker v. Des Moines Independent Community School District*, the ACLU successfully challenged a school district's decision to suspend three students for wearing armbands in protest of the Vietnam War. 393 U.S. 503 (1969). The court declared that students and teachers do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." *Id.* at 506. Over the years, the ACLU has also successfully defended the right of students to wear an anti-abortion armband, a pro-LGBTQ t-shirt, and shirts critical of political figures. Schools may not discipline students for expressing an idea or political viewpoint in class or during school activities, as long as it does not cause a substantial disruption to the school environment.

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RIGHTS OF LGBTQ STUDENTS

Cultivating a Safe Environment: Bullying of lesbian, gay, bisexual, transgender, and queer (“LGBTQ”) students has been documented as pervasive at many schools and is all too often ignored, or even encouraged, by school officials. LGBTQ students have a right to live their authentic lives and express themselves at school. Students have a right to be out of the closet at school, and conversely, public schools are not allowed to “out” students publicly. School officials and administrators must ensure they are creating a safe learning environment and protecting LGBTQ students from bullying and harassment. *See, e.g., Title IX, 20 U.S.C. § 1681* (schools may be liable if they act with deliberate indifference in failing to protect students from severe harassment on the basis of sex).



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Discipline: The intimate relationships of LGBTQ students must be treated with equal dignity as those of heterosexual students. Policies that prohibit same-sex couples or dates from attending prom, homecoming, or other dance functions violates students’ rights under Title IX of the Education Amendments of 1972, the Equal Protection Clause of the U.S. Constitution, and the Bill of Rights of the Virginia Constitution. LGBTQ students should not be punished more severely than heterosexual students for similar behavior, including for displays of affection.

LGBTQ Student Organizations: Students interested in forming a student organization, typically called a gay-straight alliance (“GSA”), are to be treated the same as students forming any other noncurricular organization or club. *See, e.g., 20 U.S.C. § 4071(a)* (if a school allows any noncurricular student group to meet, it cannot deny other groups the same access based on the content of their interest); *Gay All. of Students v. Matthews*, 544 F.2d 162 (4th Cir. 1976).

Gender Markers, Pronouns, and Student Records: Students should be addressed using their preferred names and pronouns. Refusing to do so, or refusing to update the gender markers on a student’s records when provided with appropriate documentation, may be considered a form of sex-based discrimination under federal law. *See Grimm v. Gloucester County Sch. Bd.*, Civil No. 4:15-cv-52, 2019 U.S. Dist. Lexis 138246 (E.D. Va. Aug. 9, 2019). Likewise, a student’s right to privacy includes a student’s sexual orientation or gender identity. It is against the law for school officials to disclose or compel students to disclose this information, even if the student appears open about their sexual orientation or gender identity. *See C.N. v. Wolf*, 410 F. Supp. 2d 894, 903 (C.D. Cal. 2005).



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DISCIPLINE AND ARRESTS

Generally: School discipline policies and practices should be fair and equitable and should prioritize prevention and intervention rather than harsh punishments like suspension, expulsion, and referral to law enforcement. The goal of discipline should be to teach appropriate behaviors and minimize the time students spend out of class. In Spring 2015, the Center for Public Integrity released a study finding that Virginia led the country in schools referring students to law enforcement, a phenomenon known as the “school-to-prison pipeline.” Additional studies conducted by the Virginia Department of Education found that African American students and students with disabilities were disproportionately represented in both suspensions and referrals to law enforcement throughout Virginia schools. These disparities open up school districts to potential legal challenges for race and disability discrimination under federal civil rights laws. *See, e.g.*, Complaint against Richmond Public Schools, available at <https://acluva.org/en/cases/equal-treatment-richmond-public-school-students>. In order to avoid potential legal problems, and to provide a more equitable school environment, school officials should reevaluate and revise their current discipline policies and practices to create a more positive and preventative approach to student conduct. The Virginia Board of Education has provided a blueprint for schools to use in revising their outdated practices – the Model Guidance for Positive, Preventative Code of Student Conduct Policy and Alternatives to Suspension, available at http://www.doe.virginia.gov/support/student_conduct/index.shtml.

Due Process: The U.S. Constitution requires that students receive due process before disciplinary measures are imposed. This means that school officials must follow certain procedures before they can suspend or expel students from school. Students are generally entitled to receive notice prior to any suspension or expulsion. The notice must include the facts concerning the suspension or expulsion, and the basis for any accusations. The notice must also provide students an opportunity to explain their side. *See, e.g., Goss v. Lopez*, 419 U.S. 565 (1975). For Virginia’s specific procedural requirements, see Va. Code § 22.1-276.01 *et seq.*

Corporal Punishment: Corporal or physical punishment of students is strictly prohibited by Virginia law. *See* Va. Code § 22.1-279.1.

School Resource Officers: School Resource Officers (“SROs”) can protect students from outside danger, but often punish minor behaviors through ticketing and arrests. Law enforcement intervention should typically be a last resort for minor violations best handled by schools as discipline issues. For additional resources on how to limit disproportionate school-based arrests or referrals to law enforcement, visit the Model Guidance for Positive, Preventative Code of Student Conduct Policy and Alternatives to Suspension, available at http://www.doe.virginia.gov/support/student_conduct/index.shtml.



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RIGHTS OF PREGNANT STUDENTS

Schools are prohibited from excluding pregnant students and students with children under Title IX of the Education Amendments of 1972. This means that schools must also ensure that pregnant students or students with children have access to educational instruction, school activities, and reasonable accommodations, to the same extent that students with temporary medical conditions are given access, including the ability to make up missed classwork and learn in a safe, nonjudgmental environment. Schools are also not allowed to punish students who choose to terminate a pregnancy or to reveal a student's private medical information.



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Dr. Brian Nichols
New Kent County
PO Box 110
New Kent, VA 23124

RE: Students' Rights Reminder for the 2019-2020 Academic Year

Dear Superintendent,

As our communities prepare for the new academic year and students head back to school, it is important to be aware of the key issues affecting Virginia's students and their rights. Being aware of students' rights under state and federal law can help school officials avoid any potential legal complications and contribute to a positive learning environment that will allow each student to thrive.



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Gender Markers, Pronouns, and Student Records: Students should be addressed using their preferred names and pronouns. Refusing to do so, or refusing to update the gender markers on a student’s records when provided with appropriate documentation, may be considered a form of sex-based discrimination under federal law. *See Grimm v. Gloucester County Sch. Bd.*, Civil No. 4:15-cv-52, 2019 U.S. Dist. Lexis 138246 (E.D. Va. Aug. 9, 2019). Likewise, a student’s right to privacy includes a student’s sexual orientation or gender identity. It is against the law for school officials to disclose or compel students to disclose this information, even if the student appears open about their sexual orientation or gender identity. *See C.N. v. Wolf*, 410 F. Supp. 2d 894, 903 (C.D. Cal. 2005).



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DISCIPLINE AND ARRESTS

Generally: School discipline policies and practices should be fair and equitable and should prioritize prevention and intervention rather than harsh punishments like suspension, expulsion, and referral to law enforcement. The goal of discipline should be to teach appropriate behaviors and minimize the time students spend out of class. In Spring 2015, the Center for Public Integrity released a study finding that Virginia led the country in schools referring students to law enforcement, a phenomenon known as the “school-to-prison pipeline.” Additional studies conducted by the Virginia Department of Education found that African American students and students with disabilities were disproportionately represented in both suspensions and referrals to law enforcement throughout Virginia schools. These disparities open up school districts to potential legal challenges for race and disability discrimination under federal civil rights laws. *See, e.g.*, Complaint against Richmond Public Schools, available at <https://acluva.org/en/cases/equal-treatment-richmond-public-school-students>. In order to avoid potential legal problems, and to provide a more equitable school environment, school officials should reevaluate and revise their current discipline policies and practices to create a more positive and preventative approach to student conduct. The Virginia Board of Education has provided a blueprint for schools to use in revising their outdated practices – the Model Guidance for Positive, Preventative Code of Student Conduct Policy and Alternatives to Suspension, available at http://www.doe.virginia.gov/support/student_conduct/index.shtml.

Due Process: The U.S. Constitution requires that students receive due process before disciplinary measures are imposed. This means that school officials must follow certain procedures before they can suspend or expel students from school. Students are generally entitled to receive notice prior to any suspension or expulsion. The notice must include the facts concerning the suspension or expulsion, and the basis for any accusations. The notice must also provide students an opportunity to explain their side. *See, e.g., Goss v. Lopez*, 419 U.S. 565 (1975). For Virginia’s specific procedural requirements, see Va. Code § 22.1-276.01 *et seq.*

Corporal Punishment: Corporal or physical punishment of students is strictly prohibited by Virginia law. *See* Va. Code § 22.1-279.1.

School Resource Officers: School Resource Officers (“SROs”) can protect students from outside danger, but often punish minor behaviors through ticketing and arrests. Law enforcement intervention should typically be a last resort for minor violations best handled by schools as discipline issues. For additional resources on how to limit disproportionate school-based arrests or referrals to law enforcement, visit the Model Guidance for Positive, Preventative Code of Student Conduct Policy and Alternatives to Suspension, available at http://www.doe.virginia.gov/support/student_conduct/index.shtml.



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RIGHTS OF STUDENTS WITH DISABILITIES

Students with disabilities are provided legal protections under several federal laws. The Individuals with Disabilities Education Act (“IDEA”) requires that public schools provide eligible students with disabilities a “free, appropriate public education” in the least restrictive environment. *See* 20 U.S.C. § 1400 *et seq.* As part of the IDEA, schools must affirmatively locate, identify, and evaluate children in their district for special education and related services, a process known as “child find.” Parents may also request an evaluation at any time in writing or by speaking to a teacher or administrator, and the school district must respond to the parent’s request. Schools must educate students with disabilities in the least restrictive setting possible, with an emphasis on inclusion and integration in the regular education classroom where feasible. Additionally, students receiving special education services under the IDEA, as well as students suspected of being eligible to receive services, are entitled to certain protections and safeguards in the school discipline process. *See* 34 C.F.R. § 300.530 *et seq.*

Students with disabilities are also provided with protections under Section 504 of the Rehabilitation Act of 1974 (“Section 504”) and Title II of the Americans with Disabilities Act (“ADA”). Section 504 and the ADA prohibit discrimination against students with disabilities. This means that schools are prohibited by federal law from denying students with disabilities equal access to academic courses, field trips, extracurricular activities, school technology, and health services. School officials also have a duty to ensure that students with disabilities are not being discriminated against by being denied necessary accommodations. Restricting access to educational activities and opportunities, ignoring harassment and bullying, and failing to train staff on compliance with these laws is also prohibited under Section 504 and the ADA. *See also* Va. Code § 22.1-213 *et seq.*

RIGHTS OF IMMIGRANT STUDENTS

Schools cannot discriminate against students on the basis of race, color, or national origin. This includes discriminating against students on the basis of their immigration status. Undocumented students have a right to a free public education in your school district regardless of their immigration status, and schools cannot deny students of this right. *See, e.g., Plyler v. Doe*, 457 U.S. 202 (1982). Likewise, schools are not permitted to deny enrollment to a student based on their undocumented status; treat a student differently to determine residency; make inquiries of students or parents that may expose their undocumented status; require social security numbers from parents or students for purposes of enrollment; or engage in any other practices which may chill the right of access to school. Schools cannot turn away students with limited English proficiency; they must be provided with language instruction. *See, e.g., Lau v. Nichols*, 414 U.S. 563 (1974).

School officials should not allow immigration enforcement actions on school grounds without a judicial warrant based on probable cause that a criminal violation of the immigration laws has occurred. Schools should not call immigration authorities on students or consent to any immigration enforcement on school grounds without a criminal warrant. There is no state law requiring any state or local official to contact immigration officials nor any state or federal law prohibiting adoption of a policy that protects students and teachers from immigration action in the absence of a judicial criminal warrant.

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Schools are prohibited from excluding pregnant students and students with children under Title IX of the Education Amendments of 1972. This means that schools must also ensure that pregnant students or students with children have access to educational instruction, school activities, and reasonable accommodations, to the same extent that students with temporary medical conditions are given access, including the ability to make up missed classwork and learn in a safe, nonjudgmental environment. Schools are also not allowed to punish students who choose to terminate a pregnancy or to reveal a student's private medical information.



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Dr. George Parker III
Newport News
12465 Warwick Blvd
Newport News, VA 23606

RE: Students' Rights Reminder for the 2019-2020 Academic Year

Dear Superintendent,

As our communities prepare for the new academic year and students head back to school, it is important to be aware of the key issues affecting Virginia's students and their rights. Being aware of students' rights under state and federal law can help school officials avoid any potential legal complications and contribute to a positive learning environment that will allow each student to thrive.



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Federal and state laws afford children enrolled in school protection from discrimination and harassment based on race, color, religion, sex, national origin, or disability. Schools are responsible for ensuring these rights are protected and for promoting a safe school atmosphere. Additionally, schools are responsible for ensuring that students' right to free speech is respected and that the freedom to practice their religion—or no religion at all— is upheld.

Summarized below you will find information regarding: student speech rights; the Pledge of Allegiance; censorship; religious beliefs and accommodations; the rights of students who identify as LGBTQ; discipline and arrests; the rights of students with disabilities; the rights of students who are immigrants; and the rights of students who are pregnant.

We hope this information will help your school district understand the rights of students in schools and guide you in taking actions that ensure student rights are protected in a safe and supportive environment. Please do not hesitate to contact the ACLU of Virginia if you have any questions about these issues or if we can be of any assistance to you in evaluating and formulating school policy on any of these matters. We can be reached at (804) 644-8022 or acluva@acluva.org.

Very truly yours,

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Claire G. Gastañaga
Executive Director



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STUDENT SPEECH RIGHTS

The First Amendment ensures that students cannot be punished for exercising free speech rights, even if administrators do not approve of their message. In the landmark Supreme Court case *Tinker v. Des Moines Independent Community School District*, the ACLU successfully challenged a school district's decision to suspend three students for wearing armbands in protest of the Vietnam War. 393 U.S. 503 (1969). The court declared that students and teachers do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." *Id.* at 506. Over the years, the ACLU has also successfully defended the right of students to wear an anti-abortion armband, a pro-LGBTQ t-shirt, and shirts critical of political figures. Schools may not discipline students for expressing an idea or political viewpoint in class or during school activities, as long as it does not cause a substantial disruption to the school environment.

It is true that the constitutional rights of students in public school are not the same as those of adults exercising First Amendment rights on public streets. Students' speech rights may be limited by reasonable time, place, and manner restrictions because of the unique characteristics of the school environment. A school may limit student speech, for example, through reasonable school-wide policies against cyberbullying. Additionally, schools may prohibit vulgar or offensive speech that is inconsistent with the "fundamental values of public school education." *Bethel Sch. Dist. No. 43 v. Fraser*, 478 U.S. 675, 685-86 (1986).

School officials should take care, however, not to define peaceful assembly as behavior that causes a substantial disruption to school activities. If students engage in a walkout, school officials may choose to discipline students for missing class but may not engage in harsher punishment because of the message or political nature of the action. School officials must not draw distinctions based on the content of a student's speech or expressive activity in imposing discipline.

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CENSORSHIP

Books: Banning books, removing books and materials from a classroom or library, or otherwise making it difficult for students to read a broad array of literature limits intellectual freedom. Making books and ideas unavailable based on their content or viewpoint or taking books out of schools because they are controversial, unpopular, or offensive, may violate the First Amendment. *See, e.g., Bd. of Educ. v. Pico*, 457 U.S. 853 (1982). Courts view school libraries as the main place where students exercise their freedom "to inquire, to study and to evaluate, to gain new maturity and understanding." *Id.* at 868.

Student Publications: Schools may review and control the content of school sponsored student publications including student newspapers, yearbooks, literary magazines, on-campus videos, and radio broadcasts. But schools cannot control student publications that are not sponsored or funded by the school, not done as part of a class or school project, or that are done on a student’s own time with their own resources. *See, e.g., Burt v. Barker*, 861 F.2d 1149 (9th Cir. 1988); *Fujishima v. Bd. of Ed.*, 160 F.2d 1355 (7th Cir. 1972); *Eisner v. Stanford Bd. of Ed.*, 440 F.2d 803 (2d Cir. 1971).

RELIGIOUS BELIEFS AND ACCOMMODATIONS

Free Exercise Clause: Under the First Amendment’s Free Exercise Clause, students have the right to worship as they see fit, with only limited restrictions. This means that while at school, students are free to practice their religion or nonreligion and to express themselves religiously without interference by school officials. Students may, for example, wear religious attire or clothing with religious messaging to school; post religious messages or images on their lockers; or bring religious materials, including religious texts or objects, to school. School officials may not, for instance, require students to remove their hijab, yarmulke, or other head covering, as it substantially burdens the practice of the student’s religion. *See, e.g., Va. Code § 22.1-203.1 et seq.; VIRGINIA STATE BOARD OF EDUCATION, GUIDELINES CONCERNING RELIGIOUS ACTIVITY IN THE PUBLIC SCHOOLS* (1995).

Establishment Clause: Under the First Amendment’s Establishment Clause, school officials cannot favor one religion over another or favor religion over nonbelief. In practice, this means that school officials and teachers cannot conduct prayer or bible-reading sessions, organize or participate in student-led prayer, or hold a prayer at graduation or sporting events, even when participation is voluntary. *See, e.g., Abington Sch. Dist. v. Schempp*, 374 U.S. 203 (1963); *Engel v. Vitale*, 370 U.S. 421 (1962); *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 308 (2000); *Lee v. Weisman*, 505 U.S. 577 (1992). Teachers cannot lead students in devotional activities or encourage student participation in religious activity before or after school, during class, or at school-sponsored activities. In fact, in the public-school context, the Supreme Court has invalidated almost every instance of school- or teacher-sponsored religious expression. Under Virginia law, school boards are permitted to establish a daily observance of one minute of silence, but the school board must be careful to ensure that its policy has secular justifications and is not merely a pretense to encourage prayer. *See, e.g., Va. Code § 22.1-203; VIRGINIA STATE BOARD OF EDUCATION, GUIDELINES CONCERNING RELIGIOUS ACTIVITY IN THE PUBLIC SCHOOLS* (1995).

RIGHTS OF LGBTQ STUDENTS

Cultivating a Safe Environment: Bullying of lesbian, gay, bisexual, transgender, and queer (“LGBTQ”) students has been documented as pervasive at many schools and is all too often ignored, or even encouraged, by school officials. LGBTQ students have a right to live their authentic lives and express themselves at school. Students have a right to be out of the closet at school, and conversely, public schools are not allowed to “out” students publicly. School officials and administrators must ensure they are creating a safe learning environment and protecting LGBTQ students from bullying and harassment. *See, e.g., Title IX, 20 U.S.C. § 1681* (schools may be liable if they act with deliberate indifference in failing to protect students from severe harassment on the basis of sex).



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Restrooms & Locker Rooms: Transgender students must be allowed to use the restroom facilities consistent with their gender identity. Schools cannot create policies that require transgender students to use restrooms or locker rooms that do not correspond with their gender identity, and schools may not create policies that require transgender students to use single-user facilities. *See Grimm v. Gloucester County Sch. Bd.*, Civil No. 4:15-cv-52, 2019 U.S. Dist. Lexis 138246 (E.D. Va. Aug. 9, 2019).

Dress Code: School officials cannot force students to wear clothing inconsistent with their gender identity. Public schools may have dress codes, but dress codes cannot treat students differently based on their gender, force students to conform to sex stereotypes, or censor particular viewpoints. Schools cannot enact dress codes based on the stereotype that only girls can wear some types of clothes and only boys wear other types of clothes. *See, e.g., U.S. v. Virginia*, 518 U.S. 515, 533 (1996) (government actors must not treat male and female students differently because of “overbroad generalizations about the different talents, capacities, or preferences of males and females.”). Schools may, for example, require that skirts be a certain length; however, they cannot require that some students wear skirts and prohibit others from doing so based on the student’s sex or gender expression. This also applies to pants, ties, or other clothing associated with traditional gender roles. And it applies to attire requirements for homecoming, prom, graduation, and other special school events.

Discipline: The intimate relationships of LGBTQ students must be treated with equal dignity as those of heterosexual students. Policies that prohibit same-sex couples or dates from attending prom, homecoming, or other dance functions violates students’ rights under Title IX of the Education Amendments of 1972, the Equal Protection Clause of the U.S. Constitution, and the Bill of Rights of the Virginia Constitution. LGBTQ students should not be punished more severely than heterosexual students for similar behavior, including for displays of affection.

LGBTQ Student Organizations: Students interested in forming a student organization, typically called a gay-straight alliance (“GSA”), are to be treated the same as students forming any other noncurricular organization or club. *See, e.g., 20 U.S.C. § 4071(a)* (if a school allows any noncurricular student group to meet, it cannot deny other groups the same access based on the content of their interest); *Gay All. of Students v. Matthews*, 544 F.2d 162 (4th Cir. 1976).

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DISCIPLINE AND ARRESTS

Generally: School discipline policies and practices should be fair and equitable and should prioritize prevention and intervention rather than harsh punishments like suspension, expulsion, and referral to law enforcement. The goal of discipline should be to teach appropriate behaviors and minimize the time students spend out of class. In Spring 2015, the Center for Public Integrity released a study finding that Virginia led the country in schools referring students to law enforcement, a phenomenon known as the “school-to-prison pipeline.” Additional studies conducted by the Virginia Department of Education found that African American students and students with disabilities were disproportionately represented in both suspensions and referrals to law enforcement throughout Virginia schools. These disparities open up school districts to potential legal challenges for race and disability discrimination under federal civil rights laws. *See, e.g.*, Complaint against Richmond Public Schools, available at <https://acluva.org/en/cases/equal-treatment-richmond-public-school-students>. In order to avoid potential legal problems, and to provide a more equitable school environment, school officials should reevaluate and revise their current discipline policies and practices to create a more positive and preventative approach to student conduct. The Virginia Board of Education has provided a blueprint for schools to use in revising their outdated practices – the Model Guidance for Positive, Preventative Code of Student Conduct Policy and Alternatives to Suspension, available at http://www.doe.virginia.gov/support/student_conduct/index.shtml.

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RIGHTS OF STUDENTS WITH DISABILITIES

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RIGHTS OF IMMIGRANT STUDENTS

Schools cannot discriminate against students on the basis of race, color, or national origin. This includes discriminating against students on the basis of their immigration status. Undocumented students have a right to a free public education in your school district regardless of their immigration status, and schools cannot deny students of this right. *See, e.g., Plyler v. Doe*, 457 U.S. 202 (1982). Likewise, schools are not permitted to deny enrollment to a student based on their undocumented status; treat a student differently to determine residency; make inquiries of students or parents that may expose their undocumented status; require social security numbers from parents or students for purposes of enrollment; or engage in any other practices which may chill the right of access to school. Schools cannot turn away students with limited English proficiency; they must be provided with language instruction. *See, e.g., Lau v. Nichols*, 414 U.S. 563 (1974).

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RIGHTS OF PREGNANT STUDENTS

Schools are prohibited from excluding pregnant students and students with children under Title IX of the Education Amendments of 1972. This means that schools must also ensure that pregnant students or students with children have access to educational instruction, school activities, and reasonable accommodations, to the same extent that students with temporary medical conditions are given access, including the ability to make up missed classwork and learn in a safe, nonjudgmental environment. Schools are also not allowed to punish students who choose to terminate a pregnancy or to reveal a student's private medical information.



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Dr. Sharon Byrdsong
Norfolk
PO Box 1357
Norfolk, VA 23501

RE: Students' Rights Reminder for the 2019-2020 Academic Year

Dear Superintendent,

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Claire G. Gastañaga
Executive Director



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Establishment Clause: Under the First Amendment’s Establishment Clause, school officials cannot favor one religion over another or favor religion over nonbelief. In practice, this means that school officials and teachers cannot conduct prayer or bible-reading sessions, organize or participate in student-led prayer, or hold a prayer at graduation or sporting events, even when participation is voluntary. *See, e.g., Abington Sch. Dist. v. Schempp*, 374 U.S. 203 (1963); *Engel v. Vitale*, 370 U.S. 421 (1962); *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 308 (2000); *Lee v. Weisman*, 505 U.S. 577 (1992). Teachers cannot lead students in devotional activities or encourage student participation in religious activity before or after school, during class, or at school-sponsored activities. In fact, in the public-school context, the Supreme Court has invalidated almost every instance of school- or teacher-sponsored religious expression. Under Virginia law, school boards are permitted to establish a daily observance of one minute of silence, but the school board must be careful to ensure that its policy has secular justifications and is not merely a pretense to encourage prayer. *See, e.g., Va. Code § 22.1-203; VIRGINIA STATE BOARD OF EDUCATION, GUIDELINES CONCERNING RELIGIOUS ACTIVITY IN THE PUBLIC SCHOOLS* (1995).

RIGHTS OF LGBTQ STUDENTS

Cultivating a Safe Environment: Bullying of lesbian, gay, bisexual, transgender, and queer (“LGBTQ”) students has been documented as pervasive at many schools and is all too often ignored, or even encouraged, by school officials. LGBTQ students have a right to live their authentic lives and express themselves at school. Students have a right to be out of the closet at school, and conversely, public schools are not allowed to “out” students publicly. School officials and administrators must ensure they are creating a safe learning environment and protecting LGBTQ students from bullying and harassment. *See, e.g., Title IX, 20 U.S.C. § 1681* (schools may be liable if they act with deliberate indifference in failing to protect students from severe harassment on the basis of sex).



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Discipline: The intimate relationships of LGBTQ students must be treated with equal dignity as those of heterosexual students. Policies that prohibit same-sex couples or dates from attending prom, homecoming, or other dance functions violates students’ rights under Title IX of the Education Amendments of 1972, the Equal Protection Clause of the U.S. Constitution, and the Bill of Rights of the Virginia Constitution. LGBTQ students should not be punished more severely than heterosexual students for similar behavior, including for displays of affection.

LGBTQ Student Organizations: Students interested in forming a student organization, typically called a gay-straight alliance (“GSA”), are to be treated the same as students forming any other noncurricular organization or club. *See, e.g., 20 U.S.C. § 4071(a)* (if a school allows any noncurricular student group to meet, it cannot deny other groups the same access based on the content of their interest); *Gay All. of Students v. Matthews*, 544 F.2d 162 (4th Cir. 1976).

Gender Markers, Pronouns, and Student Records: Students should be addressed using their preferred names and pronouns. Refusing to do so, or refusing to update the gender markers on a student’s records when provided with appropriate documentation, may be considered a form of sex-based discrimination under federal law. *See Grimm v. Gloucester County Sch. Bd.*, Civil No. 4:15-cv-52, 2019 U.S. Dist. Lexis 138246 (E.D. Va. Aug. 9, 2019). Likewise, a student’s right to privacy includes a student’s sexual orientation or gender identity. It is against the law for school officials to disclose or compel students to disclose this information, even if the student appears open about their sexual orientation or gender identity. *See C.N. v. Wolf*, 410 F. Supp. 2d 894, 903 (C.D. Cal. 2005).



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DISCIPLINE AND ARRESTS

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Due Process: The U.S. Constitution requires that students receive due process before disciplinary measures are imposed. This means that school officials must follow certain procedures before they can suspend or expel students from school. Students are generally entitled to receive notice prior to any suspension or expulsion. The notice must include the facts concerning the suspension or expulsion, and the basis for any accusations. The notice must also provide students an opportunity to explain their side. *See, e.g., Goss v. Lopez*, 419 U.S. 565 (1975). For Virginia’s specific procedural requirements, see Va. Code § 22.1-276.01 *et seq.*

Corporal Punishment: Corporal or physical punishment of students is strictly prohibited by Virginia law. *See* Va. Code § 22.1-279.1.

School Resource Officers: School Resource Officers (“SROs”) can protect students from outside danger, but often punish minor behaviors through ticketing and arrests. Law enforcement intervention should typically be a last resort for minor violations best handled by schools as discipline issues. For additional resources on how to limit disproportionate school-based arrests or referrals to law enforcement, visit the Model Guidance for Positive, Preventative Code of Student Conduct Policy and Alternatives to Suspension, available at http://www.doe.virginia.gov/support/student_conduct/index.shtml.



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Students with disabilities are provided legal protections under several federal laws. The Individuals with Disabilities Education Act (“IDEA”) requires that public schools provide eligible students with disabilities a “free, appropriate public education” in the least restrictive environment. *See* 20 U.S.C. § 1400 *et seq.* As part of the IDEA, schools must affirmatively locate, identify, and evaluate children in their district for special education and related services, a process known as “child find.” Parents may also request an evaluation at any time in writing or by speaking to a teacher or administrator, and the school district must respond to the parent’s request. Schools must educate students with disabilities in the least restrictive setting possible, with an emphasis on inclusion and integration in the regular education classroom where feasible. Additionally, students receiving special education services under the IDEA, as well as students suspected of being eligible to receive services, are entitled to certain protections and safeguards in the school discipline process. *See* 34 C.F.R. § 300.530 *et seq.*

Students with disabilities are also provided with protections under Section 504 of the Rehabilitation Act of 1974 (“Section 504”) and Title II of the Americans with Disabilities Act (“ADA”). Section 504 and the ADA prohibit discrimination against students with disabilities. This means that schools are prohibited by federal law from denying students with disabilities equal access to academic courses, field trips, extracurricular activities, school technology, and health services. School officials also have a duty to ensure that students with disabilities are not being discriminated against by being denied necessary accommodations. Restricting access to educational activities and opportunities, ignoring harassment and bullying, and failing to train staff on compliance with these laws is also prohibited under Section 504 and the ADA. *See also* Va. Code § 22.1-213 *et seq.*

RIGHTS OF IMMIGRANT STUDENTS

Schools cannot discriminate against students on the basis of race, color, or national origin. This includes discriminating against students on the basis of their immigration status. Undocumented students have a right to a free public education in your school district regardless of their immigration status, and schools cannot deny students of this right. *See, e.g., Plyler v. Doe*, 457 U.S. 202 (1982). Likewise, schools are not permitted to deny enrollment to a student based on their undocumented status; treat a student differently to determine residency; make inquiries of students or parents that may expose their undocumented status; require social security numbers from parents or students for purposes of enrollment; or engage in any other practices which may chill the right of access to school. Schools cannot turn away students with limited English proficiency; they must be provided with language instruction. *See, e.g., Lau v. Nichols*, 414 U.S. 563 (1974).

School officials should not allow immigration enforcement actions on school grounds without a judicial warrant based on probable cause that a criminal violation of the immigration laws has occurred. Schools should not call immigration authorities on students or consent to any immigration enforcement on school grounds without a criminal warrant. There is no state law requiring any state or local official to contact immigration officials nor any state or federal law prohibiting adoption of a policy that protects students and teachers from immigration action in the absence of a judicial criminal warrant.

RIGHTS OF PREGNANT STUDENTS

Schools are prohibited from excluding pregnant students and students with children under Title IX of the Education Amendments of 1972. This means that schools must also ensure that pregnant students or students with children have access to educational instruction, school activities, and reasonable accommodations, to the same extent that students with temporary medical conditions are given access, including the ability to make up missed classwork and learn in a safe, nonjudgmental environment. Schools are also not allowed to punish students who choose to terminate a pregnancy or to reveal a student's private medical information.



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Mr. Charles Eddie Lawrence
Northampton County
7207 Young St
Machipongo, VA 23405

RE: Students' Rights Reminder for the 2019-2020 Academic Year

Dear Superintendent,

As our communities prepare for the new academic year and students head back to school, it is important to be aware of the key issues affecting Virginia's students and their rights. Being aware of students' rights under state and federal law can help school officials avoid any potential legal complications and contribute to a positive learning environment that will allow each student to thrive.



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Federal and state laws afford children enrolled in school protection from discrimination and harassment based on race, color, religion, sex, national origin, or disability. Schools are responsible for ensuring these rights are protected and for promoting a safe school atmosphere. Additionally, schools are responsible for ensuring that students' right to free speech is respected and that the freedom to practice their religion—or no religion at all— is upheld.

Summarized below you will find information regarding: student speech rights; the Pledge of Allegiance; censorship; religious beliefs and accommodations; the rights of students who identify as LGBTQ; discipline and arrests; the rights of students with disabilities; the rights of students who are immigrants; and the rights of students who are pregnant.

We hope this information will help your school district understand the rights of students in schools and guide you in taking actions that ensure student rights are protected in a safe and supportive environment. Please do not hesitate to contact the ACLU of Virginia if you have any questions about these issues or if we can be of any assistance to you in evaluating and formulating school policy on any of these matters. We can be reached at (804) 644-8022 or acluva@acluva.org.

Very truly yours,

A handwritten signature in blue ink, which appears to read "Claire G. Gastañaga". The signature is fluid and cursive.

Claire G. Gastañaga
Executive Director



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STUDENT SPEECH RIGHTS

The First Amendment ensures that students cannot be punished for exercising free speech rights, even if administrators do not approve of their message. In the landmark Supreme Court case *Tinker v. Des Moines Independent Community School District*, the ACLU successfully challenged a school district's decision to suspend three students for wearing armbands in protest of the Vietnam War. 393 U.S. 503 (1969). The court declared that students and teachers do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." *Id.* at 506. Over the years, the ACLU has also successfully defended the right of students to wear an anti-abortion armband, a pro-LGBTQ t-shirt, and shirts critical of political figures. Schools may not discipline students for expressing an idea or political viewpoint in class or during school activities, as long as it does not cause a substantial disruption to the school environment.

It is true that the constitutional rights of students in public school are not the same as those of adults exercising First Amendment rights on public streets. Students' speech rights may be limited by reasonable time, place, and manner restrictions because of the unique characteristics of the school environment. A school may limit student speech, for example, through reasonable school-wide policies against cyberbullying. Additionally, schools may prohibit vulgar or offensive speech that is inconsistent with the "fundamental values of public school education." *Bethel Sch. Dist. No. 43 v. Fraser*, 478 U.S. 675, 685-86 (1986).

School officials should take care, however, not to define peaceful assembly as behavior that causes a substantial disruption to school activities. If students engage in a walkout, school officials may choose to discipline students for missing class but may not engage in harsher punishment because of the message or political nature of the action. School officials must not draw distinctions based on the content of a student's speech or expressive activity in imposing discipline.

PLEDGE OF ALLEGIANCE

Schools cannot punish students for refusing to salute the flag or say the Pledge of Allegiance. *W.Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624 (1943); *Sherman v. Comm. Consol. Sch. Dist. 21*, 980 F.2d 437 (7th Cir. 1992). School officials also cannot force students to stand during the Pledge of Allegiance or leave the room if a student refuses to recite the Pledge. *See* Va. Code § 22.1-202(C) ("[N]o student shall be compelled to recite the Pledge if he, his parent or legal guardian objects on religious, philosophical or other grounds to his participating in this exercise.")

CENSORSHIP

Books: Banning books, removing books and materials from a classroom or library, or otherwise making it difficult for students to read a broad array of literature limits intellectual freedom. Making books and ideas unavailable based on their content or viewpoint or taking books out of schools because they are controversial, unpopular, or offensive, may violate the First Amendment. *See, e.g., Bd. of Educ. v. Pico*, 457 U.S. 853 (1982). Courts view school libraries as the main place where students exercise their freedom "to inquire, to study and to evaluate, to gain new maturity and understanding." *Id.* at 868.

Student Publications: Schools may review and control the content of school sponsored student publications including student newspapers, yearbooks, literary magazines, on-campus videos, and radio broadcasts. But schools cannot control student publications that are not sponsored or funded by the school, not done as part of a class or school project, or that are done on a student’s own time with their own resources. *See, e.g., Burt v. Barker*, 861 F.2d 1149 (9th Cir. 1988); *Fujishima v. Bd. of Ed.*, 160 F.2d 1355 (7th Cir. 1972); *Eisner v. Stanford Bd. of Ed.*, 440 F.2d 803 (2d Cir. 1971).

RELIGIOUS BELIEFS AND ACCOMMODATIONS

Free Exercise Clause: Under the First Amendment’s Free Exercise Clause, students have the right to worship as they see fit, with only limited restrictions. This means that while at school, students are free to practice their religion or nonreligion and to express themselves religiously without interference by school officials. Students may, for example, wear religious attire or clothing with religious messaging to school; post religious messages or images on their lockers; or bring religious materials, including religious texts or objects, to school. School officials may not, for instance, require students to remove their hijab, yarmulke, or other head covering, as it substantially burdens the practice of the student’s religion. *See, e.g., Va. Code § 22.1-203.1 et seq.; VIRGINIA STATE BOARD OF EDUCATION, GUIDELINES CONCERNING RELIGIOUS ACTIVITY IN THE PUBLIC SCHOOLS* (1995).

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DISCIPLINE AND ARRESTS

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RIGHTS OF PREGNANT STUDENTS

Schools are prohibited from excluding pregnant students and students with children under Title IX of the Education Amendments of 1972. This means that schools must also ensure that pregnant students or students with children have access to educational instruction, school activities, and reasonable accommodations, to the same extent that students with temporary medical conditions are given access, including the ability to make up missed classwork and learn in a safe, nonjudgmental environment. Schools are also not allowed to punish students who choose to terminate a pregnancy or to reveal a student's private medical information.



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Dr. Holly Wargo
Northumberland County
2172 Northumberland Hwy
Lottsburg, VA 22511

RE: Students' Rights Reminder for the 2019-2020 Academic Year

Dear Superintendent,

As our communities prepare for the new academic year and students head back to school, it is important to be aware of the key issues affecting Virginia's students and their rights. Being aware of students' rights under state and federal law can help school officials avoid any potential legal complications and contribute to a positive learning environment that will allow each student to thrive.



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We hope this information will help your school district understand the rights of students in schools and guide you in taking actions that ensure student rights are protected in a safe and supportive environment. Please do not hesitate to contact the ACLU of Virginia if you have any questions about these issues or if we can be of any assistance to you in evaluating and formulating school policy on any of these matters. We can be reached at (804) 644-8022 or acluva@acluva.org.

Very truly yours,

A handwritten signature in blue ink, which appears to read "Claire G. Gastañaga". The signature is fluid and cursive.

Claire G. Gastañaga
Executive Director



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STUDENT SPEECH RIGHTS

The First Amendment ensures that students cannot be punished for exercising free speech rights, even if administrators do not approve of their message. In the landmark Supreme Court case *Tinker v. Des Moines Independent Community School District*, the ACLU successfully challenged a school district's decision to suspend three students for wearing armbands in protest of the Vietnam War. 393 U.S. 503 (1969). The court declared that students and teachers do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." *Id.* at 506. Over the years, the ACLU has also successfully defended the right of students to wear an anti-abortion armband, a pro-LGBTQ t-shirt, and shirts critical of political figures. Schools may not discipline students for expressing an idea or political viewpoint in class or during school activities, as long as it does not cause a substantial disruption to the school environment.

It is true that the constitutional rights of students in public school are not the same as those of adults exercising First Amendment rights on public streets. Students' speech rights may be limited by reasonable time, place, and manner restrictions because of the unique characteristics of the school environment. A school may limit student speech, for example, through reasonable school-wide policies against cyberbullying. Additionally, schools may prohibit vulgar or offensive speech that is inconsistent with the "fundamental values of public school education." *Bethel Sch. Dist. No. 43 v. Fraser*, 478 U.S. 675, 685-86 (1986).

School officials should take care, however, not to define peaceful assembly as behavior that causes a substantial disruption to school activities. If students engage in a walkout, school officials may choose to discipline students for missing class but may not engage in harsher punishment because of the message or political nature of the action. School officials must not draw distinctions based on the content of a student's speech or expressive activity in imposing discipline.

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RIGHTS OF LGBTQ STUDENTS

Cultivating a Safe Environment: Bullying of lesbian, gay, bisexual, transgender, and queer (“LGBTQ”) students has been documented as pervasive at many schools and is all too often ignored, or even encouraged, by school officials. LGBTQ students have a right to live their authentic lives and express themselves at school. Students have a right to be out of the closet at school, and conversely, public schools are not allowed to “out” students publicly. School officials and administrators must ensure they are creating a safe learning environment and protecting LGBTQ students from bullying and harassment. *See, e.g., Title IX, 20 U.S.C. § 1681* (schools may be liable if they act with deliberate indifference in failing to protect students from severe harassment on the basis of sex).



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LGBTQ Student Organizations: Students interested in forming a student organization, typically called a gay-straight alliance (“GSA”), are to be treated the same as students forming any other noncurricular organization or club. *See, e.g., 20 U.S.C. § 4071(a)* (if a school allows any noncurricular student group to meet, it cannot deny other groups the same access based on the content of their interest); *Gay All. of Students v. Matthews*, 544 F.2d 162 (4th Cir. 1976).

Gender Markers, Pronouns, and Student Records: Students should be addressed using their preferred names and pronouns. Refusing to do so, or refusing to update the gender markers on a student’s records when provided with appropriate documentation, may be considered a form of sex-based discrimination under federal law. *See Grimm v. Gloucester County Sch. Bd.*, Civil No. 4:15-cv-52, 2019 U.S. Dist. Lexis 138246 (E.D. Va. Aug. 9, 2019). Likewise, a student’s right to privacy includes a student’s sexual orientation or gender identity. It is against the law for school officials to disclose or compel students to disclose this information, even if the student appears open about their sexual orientation or gender identity. *See C.N. v. Wolf*, 410 F. Supp. 2d 894, 903 (C.D. Cal. 2005).



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DISCIPLINE AND ARRESTS

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Due Process: The U.S. Constitution requires that students receive due process before disciplinary measures are imposed. This means that school officials must follow certain procedures before they can suspend or expel students from school. Students are generally entitled to receive notice prior to any suspension or expulsion. The notice must include the facts concerning the suspension or expulsion, and the basis for any accusations. The notice must also provide students an opportunity to explain their side. *See, e.g., Goss v. Lopez*, 419 U.S. 565 (1975). For Virginia’s specific procedural requirements, see Va. Code § 22.1-276.01 *et seq.*

Corporal Punishment: Corporal or physical punishment of students is strictly prohibited by Virginia law. *See* Va. Code § 22.1-279.1.

School Resource Officers: School Resource Officers (“SROs”) can protect students from outside danger, but often punish minor behaviors through ticketing and arrests. Law enforcement intervention should typically be a last resort for minor violations best handled by schools as discipline issues. For additional resources on how to limit disproportionate school-based arrests or referrals to law enforcement, visit the Model Guidance for Positive, Preventative Code of Student Conduct Policy and Alternatives to Suspension, available at http://www.doe.virginia.gov/support/student_conduct/index.shtml.



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Students with disabilities are provided legal protections under several federal laws. The Individuals with Disabilities Education Act (“IDEA”) requires that public schools provide eligible students with disabilities a “free, appropriate public education” in the least restrictive environment. *See* 20 U.S.C. § 1400 *et seq.* As part of the IDEA, schools must affirmatively locate, identify, and evaluate children in their district for special education and related services, a process known as “child find.” Parents may also request an evaluation at any time in writing or by speaking to a teacher or administrator, and the school district must respond to the parent’s request. Schools must educate students with disabilities in the least restrictive setting possible, with an emphasis on inclusion and integration in the regular education classroom where feasible. Additionally, students receiving special education services under the IDEA, as well as students suspected of being eligible to receive services, are entitled to certain protections and safeguards in the school discipline process. *See* 34 C.F.R. § 300.530 *et seq.*

Students with disabilities are also provided with protections under Section 504 of the Rehabilitation Act of 1974 (“Section 504”) and Title II of the Americans with Disabilities Act (“ADA”). Section 504 and the ADA prohibit discrimination against students with disabilities. This means that schools are prohibited by federal law from denying students with disabilities equal access to academic courses, field trips, extracurricular activities, school technology, and health services. School officials also have a duty to ensure that students with disabilities are not being discriminated against by being denied necessary accommodations. Restricting access to educational activities and opportunities, ignoring harassment and bullying, and failing to train staff on compliance with these laws is also prohibited under Section 504 and the ADA. *See also* Va. Code § 22.1-213 *et seq.*

RIGHTS OF IMMIGRANT STUDENTS

Schools cannot discriminate against students on the basis of race, color, or national origin. This includes discriminating against students on the basis of their immigration status. Undocumented students have a right to a free public education in your school district regardless of their immigration status, and schools cannot deny students of this right. *See, e.g., Plyler v. Doe*, 457 U.S. 202 (1982). Likewise, schools are not permitted to deny enrollment to a student based on their undocumented status; treat a student differently to determine residency; make inquiries of students or parents that may expose their undocumented status; require social security numbers from parents or students for purposes of enrollment; or engage in any other practices which may chill the right of access to school. Schools cannot turn away students with limited English proficiency; they must be provided with language instruction. *See, e.g., Lau v. Nichols*, 414 U.S. 563 (1974).

School officials should not allow immigration enforcement actions on school grounds without a judicial warrant based on probable cause that a criminal violation of the immigration laws has occurred. Schools should not call immigration authorities on students or consent to any immigration enforcement on school grounds without a criminal warrant. There is no state law requiring any state or local official to contact immigration officials nor any state or federal law prohibiting adoption of a policy that protects students and teachers from immigration action in the absence of a judicial criminal warrant.

RIGHTS OF PREGNANT STUDENTS

Schools are prohibited from excluding pregnant students and students with children under Title IX of the Education Amendments of 1972. This means that schools must also ensure that pregnant students or students with children have access to educational instruction, school activities, and reasonable accommodations, to the same extent that students with temporary medical conditions are given access, including the ability to make up missed classwork and learn in a safe, nonjudgmental environment. Schools are also not allowed to punish students who choose to terminate a pregnancy or to reveal a student's private medical information.



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Dr. Gina Wohlford
Norton
P. O. Box 498
Norton, VA 24273

RE: Students' Rights Reminder for the 2019-2020 Academic Year

Dear Superintendent,

As our communities prepare for the new academic year and students head back to school, it is important to be aware of the key issues affecting Virginia's students and their rights. Being aware of students' rights under state and federal law can help school officials avoid any potential legal complications and contribute to a positive learning environment that will allow each student to thrive.



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Federal and state laws afford children enrolled in school protection from discrimination and harassment based on race, color, religion, sex, national origin, or disability. Schools are responsible for ensuring these rights are protected and for promoting a safe school atmosphere. Additionally, schools are responsible for ensuring that students' right to free speech is respected and that the freedom to practice their religion—or no religion at all— is upheld.

Summarized below you will find information regarding: student speech rights; the Pledge of Allegiance; censorship; religious beliefs and accommodations; the rights of students who identify as LGBTQ; discipline and arrests; the rights of students with disabilities; the rights of students who are immigrants; and the rights of students who are pregnant.

We hope this information will help your school district understand the rights of students in schools and guide you in taking actions that ensure student rights are protected in a safe and supportive environment. Please do not hesitate to contact the ACLU of Virginia if you have any questions about these issues or if we can be of any assistance to you in evaluating and formulating school policy on any of these matters. We can be reached at (804) 644-8022 or acluva@acluva.org.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Claire G. Gastañaga". The signature is fluid and cursive.

Claire G. Gastañaga
Executive Director



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Schools cannot discriminate against students on the basis of race, color, or national origin. This includes discriminating against students on the basis of their immigration status. Undocumented students have a right to a free public education in your school district regardless of their immigration status, and schools cannot deny students of this right. *See, e.g., Plyler v. Doe*, 457 U.S. 202 (1982). Likewise, schools are not permitted to deny enrollment to a student based on their undocumented status; treat a student differently to determine residency; make inquiries of students or parents that may expose their undocumented status; require social security numbers from parents or students for purposes of enrollment; or engage in any other practices which may chill the right of access to school. Schools cannot turn away students with limited English proficiency; they must be provided with language instruction. *See, e.g., Lau v. Nichols*, 414 U.S. 563 (1974).

School officials should not allow immigration enforcement actions on school grounds without a judicial warrant based on probable cause that a criminal violation of the immigration laws has occurred. Schools should not call immigration authorities on students or consent to any immigration enforcement on school grounds without a criminal warrant. There is no state law requiring any state or local official to contact immigration officials nor any state or federal law prohibiting adoption of a policy that protects students and teachers from immigration action in the absence of a judicial criminal warrant.

RIGHTS OF PREGNANT STUDENTS

Schools are prohibited from excluding pregnant students and students with children under Title IX of the Education Amendments of 1972. This means that schools must also ensure that pregnant students or students with children have access to educational instruction, school activities, and reasonable accommodations, to the same extent that students with temporary medical conditions are given access, including the ability to make up missed classwork and learn in a safe, nonjudgmental environment. Schools are also not allowed to punish students who choose to terminate a pregnancy or to reveal a student's private medical information.



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Dr. Tameshia Grimes
Nottoway County
P.O. Box 47
Nottoway, VA 23955

RE: Students' Rights Reminder for the 2019-2020 Academic Year

Dear Superintendent,

As our communities prepare for the new academic year and students head back to school, it is important to be aware of the key issues affecting Virginia's students and their rights. Being aware of students' rights under state and federal law can help school officials avoid any potential legal complications and contribute to a positive learning environment that will allow each student to thrive.



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Federal and state laws afford children enrolled in school protection from discrimination and harassment based on race, color, religion, sex, national origin, or disability. Schools are responsible for ensuring these rights are protected and for promoting a safe school atmosphere. Additionally, schools are responsible for ensuring that students' right to free speech is respected and that the freedom to practice their religion—or no religion at all— is upheld.

Summarized below you will find information regarding: student speech rights; the Pledge of Allegiance; censorship; religious beliefs and accommodations; the rights of students who identify as LGBTQ; discipline and arrests; the rights of students with disabilities; the rights of students who are immigrants; and the rights of students who are pregnant.

We hope this information will help your school district understand the rights of students in schools and guide you in taking actions that ensure student rights are protected in a safe and supportive environment. Please do not hesitate to contact the ACLU of Virginia if you have any questions about these issues or if we can be of any assistance to you in evaluating and formulating school policy on any of these matters. We can be reached at (804) 644-8022 or acluva@acluva.org.

Very truly yours,

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Claire G. Gastañaga
Executive Director



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STUDENT SPEECH RIGHTS

The First Amendment ensures that students cannot be punished for exercising free speech rights, even if administrators do not approve of their message. In the landmark Supreme Court case *Tinker v. Des Moines Independent Community School District*, the ACLU successfully challenged a school district's decision to suspend three students for wearing armbands in protest of the Vietnam War. 393 U.S. 503 (1969). The court declared that students and teachers do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." *Id.* at 506. Over the years, the ACLU has also successfully defended the right of students to wear an anti-abortion armband, a pro-LGBTQ t-shirt, and shirts critical of political figures. Schools may not discipline students for expressing an idea or political viewpoint in class or during school activities, as long as it does not cause a substantial disruption to the school environment.

It is true that the constitutional rights of students in public school are not the same as those of adults exercising First Amendment rights on public streets. Students' speech rights may be limited by reasonable time, place, and manner restrictions because of the unique characteristics of the school environment. A school may limit student speech, for example, through reasonable school-wide policies against cyberbullying. Additionally, schools may prohibit vulgar or offensive speech that is inconsistent with the "fundamental values of public school education." *Bethel Sch. Dist. No. 43 v. Fraser*, 478 U.S. 675, 685-86 (1986).

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RIGHTS OF LGBTQ STUDENTS

Cultivating a Safe Environment: Bullying of lesbian, gay, bisexual, transgender, and queer (“LGBTQ”) students has been documented as pervasive at many schools and is all too often ignored, or even encouraged, by school officials. LGBTQ students have a right to live their authentic lives and express themselves at school. Students have a right to be out of the closet at school, and conversely, public schools are not allowed to “out” students publicly. School officials and administrators must ensure they are creating a safe learning environment and protecting LGBTQ students from bullying and harassment. *See, e.g., Title IX, 20 U.S.C. § 1681* (schools may be liable if they act with deliberate indifference in failing to protect students from severe harassment on the basis of sex).



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Restrooms & Locker Rooms: Transgender students must be allowed to use the restroom facilities consistent with their gender identity. Schools cannot create policies that require transgender students to use restrooms or locker rooms that do not correspond with their gender identity, and schools may not create policies that require transgender students to use single-user facilities. *See Grimm v. Gloucester County Sch. Bd.*, Civil No. 4:15-cv-52, 2019 U.S. Dist. Lexis 138246 (E.D. Va. Aug. 9, 2019).

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Discipline: The intimate relationships of LGBTQ students must be treated with equal dignity as those of heterosexual students. Policies that prohibit same-sex couples or dates from attending prom, homecoming, or other dance functions violates students’ rights under Title IX of the Education Amendments of 1972, the Equal Protection Clause of the U.S. Constitution, and the Bill of Rights of the Virginia Constitution. LGBTQ students should not be punished more severely than heterosexual students for similar behavior, including for displays of affection.

LGBTQ Student Organizations: Students interested in forming a student organization, typically called a gay-straight alliance (“GSA”), are to be treated the same as students forming any other noncurricular organization or club. *See, e.g., 20 U.S.C. § 4071(a)* (if a school allows any noncurricular student group to meet, it cannot deny other groups the same access based on the content of their interest); *Gay All. of Students v. Matthews*, 544 F.2d 162 (4th Cir. 1976).

Gender Markers, Pronouns, and Student Records: Students should be addressed using their preferred names and pronouns. Refusing to do so, or refusing to update the gender markers on a student’s records when provided with appropriate documentation, may be considered a form of sex-based discrimination under federal law. *See Grimm v. Gloucester County Sch. Bd.*, Civil No. 4:15-cv-52, 2019 U.S. Dist. Lexis 138246 (E.D. Va. Aug. 9, 2019). Likewise, a student’s right to privacy includes a student’s sexual orientation or gender identity. It is against the law for school officials to disclose or compel students to disclose this information, even if the student appears open about their sexual orientation or gender identity. *See C.N. v. Wolf*, 410 F. Supp. 2d 894, 903 (C.D. Cal. 2005).



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DISCIPLINE AND ARRESTS

Generally: School discipline policies and practices should be fair and equitable and should prioritize prevention and intervention rather than harsh punishments like suspension, expulsion, and referral to law enforcement. The goal of discipline should be to teach appropriate behaviors and minimize the time students spend out of class. In Spring 2015, the Center for Public Integrity released a study finding that Virginia led the country in schools referring students to law enforcement, a phenomenon known as the “school-to-prison pipeline.” Additional studies conducted by the Virginia Department of Education found that African American students and students with disabilities were disproportionately represented in both suspensions and referrals to law enforcement throughout Virginia schools. These disparities open up school districts to potential legal challenges for race and disability discrimination under federal civil rights laws. *See, e.g.*, Complaint against Richmond Public Schools, available at <https://acluva.org/en/cases/equal-treatment-richmond-public-school-students>. In order to avoid potential legal problems, and to provide a more equitable school environment, school officials should reevaluate and revise their current discipline policies and practices to create a more positive and preventative approach to student conduct. The Virginia Board of Education has provided a blueprint for schools to use in revising their outdated practices – the Model Guidance for Positive, Preventative Code of Student Conduct Policy and Alternatives to Suspension, available at http://www.doe.virginia.gov/support/student_conduct/index.shtml.

Due Process: The U.S. Constitution requires that students receive due process before disciplinary measures are imposed. This means that school officials must follow certain procedures before they can suspend or expel students from school. Students are generally entitled to receive notice prior to any suspension or expulsion. The notice must include the facts concerning the suspension or expulsion, and the basis for any accusations. The notice must also provide students an opportunity to explain their side. *See, e.g., Goss v. Lopez*, 419 U.S. 565 (1975). For Virginia’s specific procedural requirements, see Va. Code § 22.1-276.01 *et seq.*

Corporal Punishment: Corporal or physical punishment of students is strictly prohibited by Virginia law. *See* Va. Code § 22.1-279.1.

School Resource Officers: School Resource Officers (“SROs”) can protect students from outside danger, but often punish minor behaviors through ticketing and arrests. Law enforcement intervention should typically be a last resort for minor violations best handled by schools as discipline issues. For additional resources on how to limit disproportionate school-based arrests or referrals to law enforcement, visit the Model Guidance for Positive, Preventative Code of Student Conduct Policy and Alternatives to Suspension, available at http://www.doe.virginia.gov/support/student_conduct/index.shtml.



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RIGHTS OF STUDENTS WITH DISABILITIES

Students with disabilities are provided legal protections under several federal laws. The Individuals with Disabilities Education Act (“IDEA”) requires that public schools provide eligible students with disabilities a “free, appropriate public education” in the least restrictive environment. *See* 20 U.S.C. § 1400 *et seq.* As part of the IDEA, schools must affirmatively locate, identify, and evaluate children in their district for special education and related services, a process known as “child find.” Parents may also request an evaluation at any time in writing or by speaking to a teacher or administrator, and the school district must respond to the parent’s request. Schools must educate students with disabilities in the least restrictive setting possible, with an emphasis on inclusion and integration in the regular education classroom where feasible. Additionally, students receiving special education services under the IDEA, as well as students suspected of being eligible to receive services, are entitled to certain protections and safeguards in the school discipline process. *See* 34 C.F.R. § 300.530 *et seq.*

Students with disabilities are also provided with protections under Section 504 of the Rehabilitation Act of 1974 (“Section 504”) and Title II of the Americans with Disabilities Act (“ADA”). Section 504 and the ADA prohibit discrimination against students with disabilities. This means that schools are prohibited by federal law from denying students with disabilities equal access to academic courses, field trips, extracurricular activities, school technology, and health services. School officials also have a duty to ensure that students with disabilities are not being discriminated against by being denied necessary accommodations. Restricting access to educational activities and opportunities, ignoring harassment and bullying, and failing to train staff on compliance with these laws is also prohibited under Section 504 and the ADA. *See also* Va. Code § 22.1-213 *et seq.*

RIGHTS OF IMMIGRANT STUDENTS

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RIGHTS OF PREGNANT STUDENTS

Schools are prohibited from excluding pregnant students and students with children under Title IX of the Education Amendments of 1972. This means that schools must also ensure that pregnant students or students with children have access to educational instruction, school activities, and reasonable accommodations, to the same extent that students with temporary medical conditions are given access, including the ability to make up missed classwork and learn in a safe, nonjudgmental environment. Schools are also not allowed to punish students who choose to terminate a pregnancy or to reveal a student's private medical information.



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Dr. Cecil Snead
Orange County
200 Dailey Drive
Orange, VA 22960

RE: Students' Rights Reminder for the 2019-2020 Academic Year

Dear Superintendent,

As our communities prepare for the new academic year and students head back to school, it is important to be aware of the key issues affecting Virginia's students and their rights. Being aware of students' rights under state and federal law can help school officials avoid any potential legal complications and contribute to a positive learning environment that will allow each student to thrive.



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Summarized below you will find information regarding: student speech rights; the Pledge of Allegiance; censorship; religious beliefs and accommodations; the rights of students who identify as LGBTQ; discipline and arrests; the rights of students with disabilities; the rights of students who are immigrants; and the rights of students who are pregnant.

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DISCIPLINE AND ARRESTS

Generally: School discipline policies and practices should be fair and equitable and should prioritize prevention and intervention rather than harsh punishments like suspension, expulsion, and referral to law enforcement. The goal of discipline should be to teach appropriate behaviors and minimize the time students spend out of class. In Spring 2015, the Center for Public Integrity released a study finding that Virginia led the country in schools referring students to law enforcement, a phenomenon known as the “school-to-prison pipeline.” Additional studies conducted by the Virginia Department of Education found that African American students and students with disabilities were disproportionately represented in both suspensions and referrals to law enforcement throughout Virginia schools. These disparities open up school districts to potential legal challenges for race and disability discrimination under federal civil rights laws. *See, e.g.*, Complaint against Richmond Public Schools, available at <https://acluva.org/en/cases/equal-treatment-richmond-public-school-students>. In order to avoid potential legal problems, and to provide a more equitable school environment, school officials should reevaluate and revise their current discipline policies and practices to create a more positive and preventative approach to student conduct. The Virginia Board of Education has provided a blueprint for schools to use in revising their outdated practices – the Model Guidance for Positive, Preventative Code of Student Conduct Policy and Alternatives to Suspension, available at http://www.doe.virginia.gov/support/student_conduct/index.shtml.

Due Process: The U.S. Constitution requires that students receive due process before disciplinary measures are imposed. This means that school officials must follow certain procedures before they can suspend or expel students from school. Students are generally entitled to receive notice prior to any suspension or expulsion. The notice must include the facts concerning the suspension or expulsion, and the basis for any accusations. The notice must also provide students an opportunity to explain their side. *See, e.g., Goss v. Lopez*, 419 U.S. 565 (1975). For Virginia’s specific procedural requirements, see Va. Code § 22.1-276.01 *et seq.*

Corporal Punishment: Corporal or physical punishment of students is strictly prohibited by Virginia law. *See* Va. Code § 22.1-279.1.

School Resource Officers: School Resource Officers (“SROs”) can protect students from outside danger, but often punish minor behaviors through ticketing and arrests. Law enforcement intervention should typically be a last resort for minor violations best handled by schools as discipline issues. For additional resources on how to limit disproportionate school-based arrests or referrals to law enforcement, visit the Model Guidance for Positive, Preventative Code of Student Conduct Policy and Alternatives to Suspension, available at http://www.doe.virginia.gov/support/student_conduct/index.shtml.



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RIGHTS OF STUDENTS WITH DISABILITIES

Students with disabilities are provided legal protections under several federal laws. The Individuals with Disabilities Education Act (“IDEA”) requires that public schools provide eligible students with disabilities a “free, appropriate public education” in the least restrictive environment. *See* 20 U.S.C. § 1400 *et seq.* As part of the IDEA, schools must affirmatively locate, identify, and evaluate children in their district for special education and related services, a process known as “child find.” Parents may also request an evaluation at any time in writing or by speaking to a teacher or administrator, and the school district must respond to the parent’s request. Schools must educate students with disabilities in the least restrictive setting possible, with an emphasis on inclusion and integration in the regular education classroom where feasible. Additionally, students receiving special education services under the IDEA, as well as students suspected of being eligible to receive services, are entitled to certain protections and safeguards in the school discipline process. *See* 34 C.F.R. § 300.530 *et seq.*

Students with disabilities are also provided with protections under Section 504 of the Rehabilitation Act of 1974 (“Section 504”) and Title II of the Americans with Disabilities Act (“ADA”). Section 504 and the ADA prohibit discrimination against students with disabilities. This means that schools are prohibited by federal law from denying students with disabilities equal access to academic courses, field trips, extracurricular activities, school technology, and health services. School officials also have a duty to ensure that students with disabilities are not being discriminated against by being denied necessary accommodations. Restricting access to educational activities and opportunities, ignoring harassment and bullying, and failing to train staff on compliance with these laws is also prohibited under Section 504 and the ADA. *See also* Va. Code § 22.1-213 *et seq.*

RIGHTS OF IMMIGRANT STUDENTS

Schools cannot discriminate against students on the basis of race, color, or national origin. This includes discriminating against students on the basis of their immigration status. Undocumented students have a right to a free public education in your school district regardless of their immigration status, and schools cannot deny students of this right. *See, e.g., Plyler v. Doe*, 457 U.S. 202 (1982). Likewise, schools are not permitted to deny enrollment to a student based on their undocumented status; treat a student differently to determine residency; make inquiries of students or parents that may expose their undocumented status; require social security numbers from parents or students for purposes of enrollment; or engage in any other practices which may chill the right of access to school. Schools cannot turn away students with limited English proficiency; they must be provided with language instruction. *See, e.g., Lau v. Nichols*, 414 U.S. 563 (1974).

School officials should not allow immigration enforcement actions on school grounds without a judicial warrant based on probable cause that a criminal violation of the immigration laws has occurred. Schools should not call immigration authorities on students or consent to any immigration enforcement on school grounds without a criminal warrant. There is no state law requiring any state or local official to contact immigration officials nor any state or federal law prohibiting adoption of a policy that protects students and teachers from immigration action in the absence of a judicial criminal warrant.

RIGHTS OF PREGNANT STUDENTS

Schools are prohibited from excluding pregnant students and students with children under Title IX of the Education Amendments of 1972. This means that schools must also ensure that pregnant students or students with children have access to educational instruction, school activities, and reasonable accommodations, to the same extent that students with temporary medical conditions are given access, including the ability to make up missed classwork and learn in a safe, nonjudgmental environment. Schools are also not allowed to punish students who choose to terminate a pregnancy or to reveal a student's private medical information.



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Dr. Wendy Gonzalez
Page County
735 W Main St
Luray, VA 22835

RE: Students' Rights Reminder for the 2019-2020 Academic Year

Dear Superintendent,

As our communities prepare for the new academic year and students head back to school, it is important to be aware of the key issues affecting Virginia's students and their rights. Being aware of students' rights under state and federal law can help school officials avoid any potential legal complications and contribute to a positive learning environment that will allow each student to thrive.



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Federal and state laws afford children enrolled in school protection from discrimination and harassment based on race, color, religion, sex, national origin, or disability. Schools are responsible for ensuring these rights are protected and for promoting a safe school atmosphere. Additionally, schools are responsible for ensuring that students' right to free speech is respected and that the freedom to practice their religion—or no religion at all— is upheld.

Summarized below you will find information regarding: student speech rights; the Pledge of Allegiance; censorship; religious beliefs and accommodations; the rights of students who identify as LGBTQ; discipline and arrests; the rights of students with disabilities; the rights of students who are immigrants; and the rights of students who are pregnant.

We hope this information will help your school district understand the rights of students in schools and guide you in taking actions that ensure student rights are protected in a safe and supportive environment. Please do not hesitate to contact the ACLU of Virginia if you have any questions about these issues or if we can be of any assistance to you in evaluating and formulating school policy on any of these matters. We can be reached at (804) 644-8022 or acluva@acluva.org.

Very truly yours,

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Claire G. Gastañaga
Executive Director



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STUDENT SPEECH RIGHTS

The First Amendment ensures that students cannot be punished for exercising free speech rights, even if administrators do not approve of their message. In the landmark Supreme Court case *Tinker v. Des Moines Independent Community School District*, the ACLU successfully challenged a school district's decision to suspend three students for wearing armbands in protest of the Vietnam War. 393 U.S. 503 (1969). The court declared that students and teachers do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." *Id.* at 506. Over the years, the ACLU has also successfully defended the right of students to wear an anti-abortion armband, a pro-LGBTQ t-shirt, and shirts critical of political figures. Schools may not discipline students for expressing an idea or political viewpoint in class or during school activities, as long as it does not cause a substantial disruption to the school environment.

It is true that the constitutional rights of students in public school are not the same as those of adults exercising First Amendment rights on public streets. Students' speech rights may be limited by reasonable time, place, and manner restrictions because of the unique characteristics of the school environment. A school may limit student speech, for example, through reasonable school-wide policies against cyberbullying. Additionally, schools may prohibit vulgar or offensive speech that is inconsistent with the "fundamental values of public school education." *Bethel Sch. Dist. No. 43 v. Fraser*, 478 U.S. 675, 685-86 (1986).

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RELIGIOUS BELIEFS AND ACCOMMODATIONS

Free Exercise Clause: Under the First Amendment’s Free Exercise Clause, students have the right to worship as they see fit, with only limited restrictions. This means that while at school, students are free to practice their religion or nonreligion and to express themselves religiously without interference by school officials. Students may, for example, wear religious attire or clothing with religious messaging to school; post religious messages or images on their lockers; or bring religious materials, including religious texts or objects, to school. School officials may not, for instance, require students to remove their hijab, yarmulke, or other head covering, as it substantially burdens the practice of the student’s religion. *See, e.g., Va. Code § 22.1-203.1 et seq.; VIRGINIA STATE BOARD OF EDUCATION, GUIDELINES CONCERNING RELIGIOUS ACTIVITY IN THE PUBLIC SCHOOLS* (1995).

Establishment Clause: Under the First Amendment’s Establishment Clause, school officials cannot favor one religion over another or favor religion over nonbelief. In practice, this means that school officials and teachers cannot conduct prayer or bible-reading sessions, organize or participate in student-led prayer, or hold a prayer at graduation or sporting events, even when participation is voluntary. *See, e.g., Abington Sch. Dist. v. Schempp*, 374 U.S. 203 (1963); *Engel v. Vitale*, 370 U.S. 421 (1962); *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 308 (2000); *Lee v. Weisman*, 505 U.S. 577 (1992). Teachers cannot lead students in devotional activities or encourage student participation in religious activity before or after school, during class, or at school-sponsored activities. In fact, in the public-school context, the Supreme Court has invalidated almost every instance of school- or teacher-sponsored religious expression. Under Virginia law, school boards are permitted to establish a daily observance of one minute of silence, but the school board must be careful to ensure that its policy has secular justifications and is not merely a pretense to encourage prayer. *See, e.g., Va. Code § 22.1-203; VIRGINIA STATE BOARD OF EDUCATION, GUIDELINES CONCERNING RELIGIOUS ACTIVITY IN THE PUBLIC SCHOOLS* (1995).

RIGHTS OF LGBTQ STUDENTS

Cultivating a Safe Environment: Bullying of lesbian, gay, bisexual, transgender, and queer (“LGBTQ”) students has been documented as pervasive at many schools and is all too often ignored, or even encouraged, by school officials. LGBTQ students have a right to live their authentic lives and express themselves at school. Students have a right to be out of the closet at school, and conversely, public schools are not allowed to “out” students publicly. School officials and administrators must ensure they are creating a safe learning environment and protecting LGBTQ students from bullying and harassment. *See, e.g., Title IX, 20 U.S.C. § 1681* (schools may be liable if they act with deliberate indifference in failing to protect students from severe harassment on the basis of sex).



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Restrooms & Locker Rooms: Transgender students must be allowed to use the restroom facilities consistent with their gender identity. Schools cannot create policies that require transgender students to use restrooms or locker rooms that do not correspond with their gender identity, and schools may not create policies that require transgender students to use single-user facilities. *See Grimm v. Gloucester County Sch. Bd.*, Civil No. 4:15-cv-52, 2019 U.S. Dist. Lexis 138246 (E.D. Va. Aug. 9, 2019).

Dress Code: School officials cannot force students to wear clothing inconsistent with their gender identity. Public schools may have dress codes, but dress codes cannot treat students differently based on their gender, force students to conform to sex stereotypes, or censor particular viewpoints. Schools cannot enact dress codes based on the stereotype that only girls can wear some types of clothes and only boys wear other types of clothes. *See, e.g., U.S. v. Virginia*, 518 U.S. 515, 533 (1996) (government actors must not treat male and female students differently because of “overbroad generalizations about the different talents, capacities, or preferences of males and females.”). Schools may, for example, require that skirts be a certain length; however, they cannot require that some students wear skirts and prohibit others from doing so based on the student’s sex or gender expression. This also applies to pants, ties, or other clothing associated with traditional gender roles. And it applies to attire requirements for homecoming, prom, graduation, and other special school events.

Discipline: The intimate relationships of LGBTQ students must be treated with equal dignity as those of heterosexual students. Policies that prohibit same-sex couples or dates from attending prom, homecoming, or other dance functions violates students’ rights under Title IX of the Education Amendments of 1972, the Equal Protection Clause of the U.S. Constitution, and the Bill of Rights of the Virginia Constitution. LGBTQ students should not be punished more severely than heterosexual students for similar behavior, including for displays of affection.

LGBTQ Student Organizations: Students interested in forming a student organization, typically called a gay-straight alliance (“GSA”), are to be treated the same as students forming any other noncurricular organization or club. *See, e.g., 20 U.S.C. § 4071(a)* (if a school allows any noncurricular student group to meet, it cannot deny other groups the same access based on the content of their interest); *Gay All. of Students v. Matthews*, 544 F.2d 162 (4th Cir. 1976).

Gender Markers, Pronouns, and Student Records: Students should be addressed using their preferred names and pronouns. Refusing to do so, or refusing to update the gender markers on a student’s records when provided with appropriate documentation, may be considered a form of sex-based discrimination under federal law. *See Grimm v. Gloucester County Sch. Bd.*, Civil No. 4:15-cv-52, 2019 U.S. Dist. Lexis 138246 (E.D. Va. Aug. 9, 2019). Likewise, a student’s right to privacy includes a student’s sexual orientation or gender identity. It is against the law for school officials to disclose or compel students to disclose this information, even if the student appears open about their sexual orientation or gender identity. *See C.N. v. Wolf*, 410 F. Supp. 2d 894, 903 (C.D. Cal. 2005).



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RIGHTS OF STUDENTS WITH DISABILITIES

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Schools are prohibited from excluding pregnant students and students with children under Title IX of the Education Amendments of 1972. This means that schools must also ensure that pregnant students or students with children have access to educational instruction, school activities, and reasonable accommodations, to the same extent that students with temporary medical conditions are given access, including the ability to make up missed classwork and learn in a safe, nonjudgmental environment. Schools are also not allowed to punish students who choose to terminate a pregnancy or to reveal a student's private medical information.



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David Martin
Patrick County
P.O. Box 346
Stuart, VA 24171

RE: Students' Rights Reminder for the 2019-2020 Academic Year

Dear Superintendent,

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Discipline: The intimate relationships of LGBTQ students must be treated with equal dignity as those of heterosexual students. Policies that prohibit same-sex couples or dates from attending prom, homecoming, or other dance functions violates students’ rights under Title IX of the Education Amendments of 1972, the Equal Protection Clause of the U.S. Constitution, and the Bill of Rights of the Virginia Constitution. LGBTQ students should not be punished more severely than heterosexual students for similar behavior, including for displays of affection.

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DISCIPLINE AND ARRESTS

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Corporal Punishment: Corporal or physical punishment of students is strictly prohibited by Virginia law. *See* Va. Code § 22.1-279.1.

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RIGHTS OF STUDENTS WITH DISABILITIES

Students with disabilities are provided legal protections under several federal laws. The Individuals with Disabilities Education Act (“IDEA”) requires that public schools provide eligible students with disabilities a “free, appropriate public education” in the least restrictive environment. *See* 20 U.S.C. § 1400 *et seq.* As part of the IDEA, schools must affirmatively locate, identify, and evaluate children in their district for special education and related services, a process known as “child find.” Parents may also request an evaluation at any time in writing or by speaking to a teacher or administrator, and the school district must respond to the parent’s request. Schools must educate students with disabilities in the least restrictive setting possible, with an emphasis on inclusion and integration in the regular education classroom where feasible. Additionally, students receiving special education services under the IDEA, as well as students suspected of being eligible to receive services, are entitled to certain protections and safeguards in the school discipline process. *See* 34 C.F.R. § 300.530 *et seq.*

Students with disabilities are also provided with protections under Section 504 of the Rehabilitation Act of 1974 (“Section 504”) and Title II of the Americans with Disabilities Act (“ADA”). Section 504 and the ADA prohibit discrimination against students with disabilities. This means that schools are prohibited by federal law from denying students with disabilities equal access to academic courses, field trips, extracurricular activities, school technology, and health services. School officials also have a duty to ensure that students with disabilities are not being discriminated against by being denied necessary accommodations. Restricting access to educational activities and opportunities, ignoring harassment and bullying, and failing to train staff on compliance with these laws is also prohibited under Section 504 and the ADA. *See also* Va. Code § 22.1-213 *et seq.*

RIGHTS OF IMMIGRANT STUDENTS

Schools cannot discriminate against students on the basis of race, color, or national origin. This includes discriminating against students on the basis of their immigration status. Undocumented students have a right to a free public education in your school district regardless of their immigration status, and schools cannot deny students of this right. *See, e.g., Plyler v. Doe*, 457 U.S. 202 (1982). Likewise, schools are not permitted to deny enrollment to a student based on their undocumented status; treat a student differently to determine residency; make inquiries of students or parents that may expose their undocumented status; require social security numbers from parents or students for purposes of enrollment; or engage in any other practices which may chill the right of access to school. Schools cannot turn away students with limited English proficiency; they must be provided with language instruction. *See, e.g., Lau v. Nichols*, 414 U.S. 563 (1974).

School officials should not allow immigration enforcement actions on school grounds without a judicial warrant based on probable cause that a criminal violation of the immigration laws has occurred. Schools should not call immigration authorities on students or consent to any immigration enforcement on school grounds without a criminal warrant. There is no state law requiring any state or local official to contact immigration officials nor any state or federal law prohibiting adoption of a policy that protects students and teachers from immigration action in the absence of a judicial criminal warrant.

RIGHTS OF PREGNANT STUDENTS

Schools are prohibited from excluding pregnant students and students with children under Title IX of the Education Amendments of 1972. This means that schools must also ensure that pregnant students or students with children have access to educational instruction, school activities, and reasonable accommodations, to the same extent that students with temporary medical conditions are given access, including the ability to make up missed classwork and learn in a safe, nonjudgmental environment. Schools are also not allowed to punish students who choose to terminate a pregnancy or to reveal a student's private medical information.



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Dr. Maria Pitre-Martin
Petersburg
255 South Boulevard East
Petersburg, VA 23805

RE: Students' Rights Reminder for the 2019-2020 Academic Year

Dear Superintendent,

As our communities prepare for the new academic year and students head back to school, it is important to be aware of the key issues affecting Virginia's students and their rights. Being aware of students' rights under state and federal law can help school officials avoid any potential legal complications and contribute to a positive learning environment that will allow each student to thrive.



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Federal and state laws afford children enrolled in school protection from discrimination and harassment based on race, color, religion, sex, national origin, or disability. Schools are responsible for ensuring these rights are protected and for promoting a safe school atmosphere. Additionally, schools are responsible for ensuring that students' right to free speech is respected and that the freedom to practice their religion—or no religion at all— is upheld.

Summarized below you will find information regarding: student speech rights; the Pledge of Allegiance; censorship; religious beliefs and accommodations; the rights of students who identify as LGBTQ; discipline and arrests; the rights of students with disabilities; the rights of students who are immigrants; and the rights of students who are pregnant.

We hope this information will help your school district understand the rights of students in schools and guide you in taking actions that ensure student rights are protected in a safe and supportive environment. Please do not hesitate to contact the ACLU of Virginia if you have any questions about these issues or if we can be of any assistance to you in evaluating and formulating school policy on any of these matters. We can be reached at (804) 644-8022 or acluva@acluva.org.

Very truly yours,

A handwritten signature in blue ink, which appears to read "Claire G. Gastañaga".

Claire G. Gastañaga
Executive Director



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STUDENT SPEECH RIGHTS

The First Amendment ensures that students cannot be punished for exercising free speech rights, even if administrators do not approve of their message. In the landmark Supreme Court case *Tinker v. Des Moines Independent Community School District*, the ACLU successfully challenged a school district's decision to suspend three students for wearing armbands in protest of the Vietnam War. 393 U.S. 503 (1969). The court declared that students and teachers do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." *Id.* at 506. Over the years, the ACLU has also successfully defended the right of students to wear an anti-abortion armband, a pro-LGBTQ t-shirt, and shirts critical of political figures. Schools may not discipline students for expressing an idea or political viewpoint in class or during school activities, as long as it does not cause a substantial disruption to the school environment.

It is true that the constitutional rights of students in public school are not the same as those of adults exercising First Amendment rights on public streets. Students' speech rights may be limited by reasonable time, place, and manner restrictions because of the unique characteristics of the school environment. A school may limit student speech, for example, through reasonable school-wide policies against cyberbullying. Additionally, schools may prohibit vulgar or offensive speech that is inconsistent with the "fundamental values of public school education." *Bethel Sch. Dist. No. 43 v. Fraser*, 478 U.S. 675, 685-86 (1986).

School officials should take care, however, not to define peaceful assembly as behavior that causes a substantial disruption to school activities. If students engage in a walkout, school officials may choose to discipline students for missing class but may not engage in harsher punishment because of the message or political nature of the action. School officials must not draw distinctions based on the content of a student's speech or expressive activity in imposing discipline.

PLEDGE OF ALLEGIANCE

Schools cannot punish students for refusing to salute the flag or say the Pledge of Allegiance. *W.Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624 (1943); *Sherman v. Comm. Consol. Sch. Dist. 21*, 980 F.2d 437 (7th Cir. 1992). School officials also cannot force students to stand during the Pledge of Allegiance or leave the room if a student refuses to recite the Pledge. *See* Va. Code § 22.1-202(C) ("[N]o student shall be compelled to recite the Pledge if he, his parent or legal guardian objects on religious, philosophical or other grounds to his participating in this exercise.")

CENSORSHIP

Books: Banning books, removing books and materials from a classroom or library, or otherwise making it difficult for students to read a broad array of literature limits intellectual freedom. Making books and ideas unavailable based on their content or viewpoint or taking books out of schools because they are controversial, unpopular, or offensive, may violate the First Amendment. *See, e.g., Bd. of Educ. v. Pico*, 457 U.S. 853 (1982). Courts view school libraries as the main place where students exercise their freedom "to inquire, to study and to evaluate, to gain new maturity and understanding." *Id.* at 868.

Student Publications: Schools may review and control the content of school sponsored student publications including student newspapers, yearbooks, literary magazines, on-campus videos, and radio broadcasts. But schools cannot control student publications that are not sponsored or funded by the school, not done as part of a class or school project, or that are done on a student’s own time with their own resources. *See, e.g., Burt v. Barker*, 861 F.2d 1149 (9th Cir. 1988); *Fujishima v. Bd. of Ed.*, 160 F.2d 1355 (7th Cir. 1972); *Eisner v. Stanford Bd. of Ed.*, 440 F.2d 803 (2d Cir. 1971).

RELIGIOUS BELIEFS AND ACCOMMODATIONS

Free Exercise Clause: Under the First Amendment’s Free Exercise Clause, students have the right to worship as they see fit, with only limited restrictions. This means that while at school, students are free to practice their religion or nonreligion and to express themselves religiously without interference by school officials. Students may, for example, wear religious attire or clothing with religious messaging to school; post religious messages or images on their lockers; or bring religious materials, including religious texts or objects, to school. School officials may not, for instance, require students to remove their hijab, yarmulke, or other head covering, as it substantially burdens the practice of the student’s religion. *See, e.g., Va. Code § 22.1-203.1 et seq.; VIRGINIA STATE BOARD OF EDUCATION, GUIDELINES CONCERNING RELIGIOUS ACTIVITY IN THE PUBLIC SCHOOLS* (1995).

Establishment Clause: Under the First Amendment’s Establishment Clause, school officials cannot favor one religion over another or favor religion over nonbelief. In practice, this means that school officials and teachers cannot conduct prayer or bible-reading sessions, organize or participate in student-led prayer, or hold a prayer at graduation or sporting events, even when participation is voluntary. *See, e.g., Abington Sch. Dist. v. Schempp*, 374 U.S. 203 (1963); *Engel v. Vitale*, 370 U.S. 421 (1962); *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 308 (2000); *Lee v. Weisman*, 505 U.S. 577 (1992). Teachers cannot lead students in devotional activities or encourage student participation in religious activity before or after school, during class, or at school-sponsored activities. In fact, in the public-school context, the Supreme Court has invalidated almost every instance of school- or teacher-sponsored religious expression. Under Virginia law, school boards are permitted to establish a daily observance of one minute of silence, but the school board must be careful to ensure that its policy has secular justifications and is not merely a pretense to encourage prayer. *See, e.g., Va. Code § 22.1-203; VIRGINIA STATE BOARD OF EDUCATION, GUIDELINES CONCERNING RELIGIOUS ACTIVITY IN THE PUBLIC SCHOOLS* (1995).

RIGHTS OF LGBTQ STUDENTS

Cultivating a Safe Environment: Bullying of lesbian, gay, bisexual, transgender, and queer (“LGBTQ”) students has been documented as pervasive at many schools and is all too often ignored, or even encouraged, by school officials. LGBTQ students have a right to live their authentic lives and express themselves at school. Students have a right to be out of the closet at school, and conversely, public schools are not allowed to “out” students publicly. School officials and administrators must ensure they are creating a safe learning environment and protecting LGBTQ students from bullying and harassment. *See, e.g., Title IX, 20 U.S.C. § 1681* (schools may be liable if they act with deliberate indifference in failing to protect students from severe harassment on the basis of sex).



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Dr. Mark R. Jones
Pittsylvania County
P. O. Box 232
Chatham, VA 24531

RE: Students' Rights Reminder for the 2019-2020 Academic Year

Dear Superintendent,

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Very truly yours,

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Claire G. Gastañaga
Executive Director



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Student Publications: Schools may review and control the content of school sponsored student publications including student newspapers, yearbooks, literary magazines, on-campus videos, and radio broadcasts. But schools cannot control student publications that are not sponsored or funded by the school, not done as part of a class or school project, or that are done on a student’s own time with their own resources. *See, e.g., Burt v. Barker*, 861 F.2d 1149 (9th Cir. 1988); *Fujishima v. Bd. of Ed.*, 160 F.2d 1355 (7th Cir. 1972); *Eisner v. Stanford Bd. of Ed.*, 440 F.2d 803 (2d Cir. 1971).

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Gender Markers, Pronouns, and Student Records: Students should be addressed using their preferred names and pronouns. Refusing to do so, or refusing to update the gender markers on a student’s records when provided with appropriate documentation, may be considered a form of sex-based discrimination under federal law. *See Grimm v. Gloucester County Sch. Bd.*, Civil No. 4:15-cv-52, 2019 U.S. Dist. Lexis 138246 (E.D. Va. Aug. 9, 2019). Likewise, a student’s right to privacy includes a student’s sexual orientation or gender identity. It is against the law for school officials to disclose or compel students to disclose this information, even if the student appears open about their sexual orientation or gender identity. *See C.N. v. Wolf*, 410 F. Supp. 2d 894, 903 (C.D. Cal. 2005).



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Corporal Punishment: Corporal or physical punishment of students is strictly prohibited by Virginia law. *See* Va. Code § 22.1-279.1.

School Resource Officers: School Resource Officers (“SROs”) can protect students from outside danger, but often punish minor behaviors through ticketing and arrests. Law enforcement intervention should typically be a last resort for minor violations best handled by schools as discipline issues. For additional resources on how to limit disproportionate school-based arrests or referrals to law enforcement, visit the Model Guidance for Positive, Preventative Code of Student Conduct Policy and Alternatives to Suspension, available at http://www.doe.virginia.gov/support/student_conduct/index.shtml.



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Students with disabilities are also provided with protections under Section 504 of the Rehabilitation Act of 1974 (“Section 504”) and Title II of the Americans with Disabilities Act (“ADA”). Section 504 and the ADA prohibit discrimination against students with disabilities. This means that schools are prohibited by federal law from denying students with disabilities equal access to academic courses, field trips, extracurricular activities, school technology, and health services. School officials also have a duty to ensure that students with disabilities are not being discriminated against by being denied necessary accommodations. Restricting access to educational activities and opportunities, ignoring harassment and bullying, and failing to train staff on compliance with these laws is also prohibited under Section 504 and the ADA. *See also* Va. Code § 22.1-213 *et seq.*

RIGHTS OF IMMIGRANT STUDENTS

Schools cannot discriminate against students on the basis of race, color, or national origin. This includes discriminating against students on the basis of their immigration status. Undocumented students have a right to a free public education in your school district regardless of their immigration status, and schools cannot deny students of this right. *See, e.g., Plyler v. Doe*, 457 U.S. 202 (1982). Likewise, schools are not permitted to deny enrollment to a student based on their undocumented status; treat a student differently to determine residency; make inquiries of students or parents that may expose their undocumented status; require social security numbers from parents or students for purposes of enrollment; or engage in any other practices which may chill the right of access to school. Schools cannot turn away students with limited English proficiency; they must be provided with language instruction. *See, e.g., Lau v. Nichols*, 414 U.S. 563 (1974).

School officials should not allow immigration enforcement actions on school grounds without a judicial warrant based on probable cause that a criminal violation of the immigration laws has occurred. Schools should not call immigration authorities on students or consent to any immigration enforcement on school grounds without a criminal warrant. There is no state law requiring any state or local official to contact immigration officials nor any state or federal law prohibiting adoption of a policy that protects students and teachers from immigration action in the absence of a judicial criminal warrant.

RIGHTS OF PREGNANT STUDENTS

Schools are prohibited from excluding pregnant students and students with children under Title IX of the Education Amendments of 1972. This means that schools must also ensure that pregnant students or students with children have access to educational instruction, school activities, and reasonable accommodations, to the same extent that students with temporary medical conditions are given access, including the ability to make up missed classwork and learn in a safe, nonjudgmental environment. Schools are also not allowed to punish students who choose to terminate a pregnancy or to reveal a student's private medical information.



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Dr. Jennifer B. Parish
Poquoson
500 City Hall Ave
Room 219
Poquoson, VA 23662

RE: Students' Rights Reminder for the 2019-2020 Academic Year

Dear Superintendent,

As our communities prepare for the new academic year and students head back to school, it is important to be aware of the key issues affecting Virginia's students and their rights. Being aware of students' rights under state and federal law can help school officials avoid any potential legal complications and contribute to a positive learning environment that will allow each student to thrive.



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Federal and state laws afford children enrolled in school protection from discrimination and harassment based on race, color, religion, sex, national origin, or disability. Schools are responsible for ensuring these rights are protected and for promoting a safe school atmosphere. Additionally, schools are responsible for ensuring that students' right to free speech is respected and that the freedom to practice their religion—or no religion at all—is upheld.

Summarized below you will find information regarding: student speech rights; the Pledge of Allegiance; censorship; religious beliefs and accommodations; the rights of students who identify as LGBTQ; discipline and arrests; the rights of students with disabilities; the rights of students who are immigrants; and the rights of students who are pregnant.

We hope this information will help your school district understand the rights of students in schools and guide you in taking actions that ensure student rights are protected in a safe and supportive environment. Please do not hesitate to contact the ACLU of Virginia if you have any questions about these issues or if we can be of any assistance to you in evaluating and formulating school policy on any of these matters. We can be reached at (804) 644-8022 or acluva@acluva.org.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Claire G. Gastañaga". The signature is fluid and cursive.

Claire G. Gastañaga
Executive Director



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STUDENT SPEECH RIGHTS

The First Amendment ensures that students cannot be punished for exercising free speech rights, even if administrators do not approve of their message. In the landmark Supreme Court case *Tinker v. Des Moines Independent Community School District*, the ACLU successfully challenged a school district's decision to suspend three students for wearing armbands in protest of the Vietnam War. 393 U.S. 503 (1969). The court declared that students and teachers do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." *Id.* at 506. Over the years, the ACLU has also successfully defended the right of students to wear an anti-abortion armband, a pro-LGBTQ t-shirt, and shirts critical of political figures. Schools may not discipline students for expressing an idea or political viewpoint in class or during school activities, as long as it does not cause a substantial disruption to the school environment.

It is true that the constitutional rights of students in public school are not the same as those of adults exercising First Amendment rights on public streets. Students' speech rights may be limited by reasonable time, place, and manner restrictions because of the unique characteristics of the school environment. A school may limit student speech, for example, through reasonable school-wide policies against cyberbullying. Additionally, schools may prohibit vulgar or offensive speech that is inconsistent with the "fundamental values of public school education." *Bethel Sch. Dist. No. 43 v. Fraser*, 478 U.S. 675, 685-86 (1986).

School officials should take care, however, not to define peaceful assembly as behavior that causes a substantial disruption to school activities. If students engage in a walkout, school officials may choose to discipline students for missing class but may not engage in harsher punishment because of the message or political nature of the action. School officials must not draw distinctions based on the content of a student's speech or expressive activity in imposing discipline.

PLEDGE OF ALLEGIANCE

Schools cannot punish students for refusing to salute the flag or say the Pledge of Allegiance. *W.Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624 (1943); *Sherman v. Comm. Consol. Sch. Dist. 21*, 980 F.2d 437 (7th Cir. 1992). School officials also cannot force students to stand during the Pledge of Allegiance or leave the room if a student refuses to recite the Pledge. *See* Va. Code § 22.1-202(C) ("[N]o student shall be compelled to recite the Pledge if he, his parent or legal guardian objects on religious, philosophical or other grounds to his participating in this exercise.")

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Dr. Elie Bracy
Portsmouth
PO Box 998
Portsmouth, VA 23705

RE: Students' Rights Reminder for the 2019-2020 Academic Year

Dear Superintendent,

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Summarized below you will find information regarding: student speech rights; the Pledge of Allegiance; censorship; religious beliefs and accommodations; the rights of students who identify as LGBTQ; discipline and arrests; the rights of students with disabilities; the rights of students who are immigrants; and the rights of students who are pregnant.

We hope this information will help your school district understand the rights of students in schools and guide you in taking actions that ensure student rights are protected in a safe and supportive environment. Please do not hesitate to contact the ACLU of Virginia if you have any questions about these issues or if we can be of any assistance to you in evaluating and formulating school policy on any of these matters. We can be reached at (804) 644-8022 or acluva@acluva.org.

Very truly yours,

A handwritten signature in blue ink, which appears to read "Claire G. Gastañaga".

Claire G. Gastañaga
Executive Director



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STUDENT SPEECH RIGHTS

The First Amendment ensures that students cannot be punished for exercising free speech rights, even if administrators do not approve of their message. In the landmark Supreme Court case *Tinker v. Des Moines Independent Community School District*, the ACLU successfully challenged a school district's decision to suspend three students for wearing armbands in protest of the Vietnam War. 393 U.S. 503 (1969). The court declared that students and teachers do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." *Id.* at 506. Over the years, the ACLU has also successfully defended the right of students to wear an anti-abortion armband, a pro-LGBTQ t-shirt, and shirts critical of political figures. Schools may not discipline students for expressing an idea or political viewpoint in class or during school activities, as long as it does not cause a substantial disruption to the school environment.

It is true that the constitutional rights of students in public school are not the same as those of adults exercising First Amendment rights on public streets. Students' speech rights may be limited by reasonable time, place, and manner restrictions because of the unique characteristics of the school environment. A school may limit student speech, for example, through reasonable school-wide policies against cyberbullying. Additionally, schools may prohibit vulgar or offensive speech that is inconsistent with the "fundamental values of public school education." *Bethel Sch. Dist. No. 43 v. Fraser*, 478 U.S. 675, 685-86 (1986).

School officials should take care, however, not to define peaceful assembly as behavior that causes a substantial disruption to school activities. If students engage in a walkout, school officials may choose to discipline students for missing class but may not engage in harsher punishment because of the message or political nature of the action. School officials must not draw distinctions based on the content of a student's speech or expressive activity in imposing discipline.

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RIGHTS OF LGBTQ STUDENTS

Cultivating a Safe Environment: Bullying of lesbian, gay, bisexual, transgender, and queer (“LGBTQ”) students has been documented as pervasive at many schools and is all too often ignored, or even encouraged, by school officials. LGBTQ students have a right to live their authentic lives and express themselves at school. Students have a right to be out of the closet at school, and conversely, public schools are not allowed to “out” students publicly. School officials and administrators must ensure they are creating a safe learning environment and protecting LGBTQ students from bullying and harassment. *See, e.g., Title IX, 20 U.S.C. § 1681* (schools may be liable if they act with deliberate indifference in failing to protect students from severe harassment on the basis of sex).



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LGBTQ Student Organizations: Students interested in forming a student organization, typically called a gay-straight alliance (“GSA”), are to be treated the same as students forming any other noncurricular organization or club. *See, e.g., 20 U.S.C. § 4071(a)* (if a school allows any noncurricular student group to meet, it cannot deny other groups the same access based on the content of their interest); *Gay All. of Students v. Matthews*, 544 F.2d 162 (4th Cir. 1976).

Gender Markers, Pronouns, and Student Records: Students should be addressed using their preferred names and pronouns. Refusing to do so, or refusing to update the gender markers on a student’s records when provided with appropriate documentation, may be considered a form of sex-based discrimination under federal law. *See Grimm v. Gloucester County Sch. Bd.*, Civil No. 4:15-cv-52, 2019 U.S. Dist. Lexis 138246 (E.D. Va. Aug. 9, 2019). Likewise, a student’s right to privacy includes a student’s sexual orientation or gender identity. It is against the law for school officials to disclose or compel students to disclose this information, even if the student appears open about their sexual orientation or gender identity. *See C.N. v. Wolf*, 410 F. Supp. 2d 894, 903 (C.D. Cal. 2005).



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Generally: School discipline policies and practices should be fair and equitable and should prioritize prevention and intervention rather than harsh punishments like suspension, expulsion, and referral to law enforcement. The goal of discipline should be to teach appropriate behaviors and minimize the time students spend out of class. In Spring 2015, the Center for Public Integrity released a study finding that Virginia led the country in schools referring students to law enforcement, a phenomenon known as the “school-to-prison pipeline.” Additional studies conducted by the Virginia Department of Education found that African American students and students with disabilities were disproportionately represented in both suspensions and referrals to law enforcement throughout Virginia schools. These disparities open up school districts to potential legal challenges for race and disability discrimination under federal civil rights laws. *See, e.g.*, Complaint against Richmond Public Schools, available at <https://acluva.org/en/cases/equal-treatment-richmond-public-school-students>. In order to avoid potential legal problems, and to provide a more equitable school environment, school officials should reevaluate and revise their current discipline policies and practices to create a more positive and preventative approach to student conduct. The Virginia Board of Education has provided a blueprint for schools to use in revising their outdated practices – the Model Guidance for Positive, Preventative Code of Student Conduct Policy and Alternatives to Suspension, available at http://www.doe.virginia.gov/support/student_conduct/index.shtml.

Due Process: The U.S. Constitution requires that students receive due process before disciplinary measures are imposed. This means that school officials must follow certain procedures before they can suspend or expel students from school. Students are generally entitled to receive notice prior to any suspension or expulsion. The notice must include the facts concerning the suspension or expulsion, and the basis for any accusations. The notice must also provide students an opportunity to explain their side. *See, e.g., Goss v. Lopez*, 419 U.S. 565 (1975). For Virginia’s specific procedural requirements, see Va. Code § 22.1-276.01 *et seq.*

Corporal Punishment: Corporal or physical punishment of students is strictly prohibited by Virginia law. *See* Va. Code § 22.1-279.1.

School Resource Officers: School Resource Officers (“SROs”) can protect students from outside danger, but often punish minor behaviors through ticketing and arrests. Law enforcement intervention should typically be a last resort for minor violations best handled by schools as discipline issues. For additional resources on how to limit disproportionate school-based arrests or referrals to law enforcement, visit the Model Guidance for Positive, Preventative Code of Student Conduct Policy and Alternatives to Suspension, available at http://www.doe.virginia.gov/support/student_conduct/index.shtml.



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RIGHTS OF STUDENTS WITH DISABILITIES

Students with disabilities are provided legal protections under several federal laws. The Individuals with Disabilities Education Act (“IDEA”) requires that public schools provide eligible students with disabilities a “free, appropriate public education” in the least restrictive environment. *See* 20 U.S.C. § 1400 *et seq.* As part of the IDEA, schools must affirmatively locate, identify, and evaluate children in their district for special education and related services, a process known as “child find.” Parents may also request an evaluation at any time in writing or by speaking to a teacher or administrator, and the school district must respond to the parent’s request. Schools must educate students with disabilities in the least restrictive setting possible, with an emphasis on inclusion and integration in the regular education classroom where feasible. Additionally, students receiving special education services under the IDEA, as well as students suspected of being eligible to receive services, are entitled to certain protections and safeguards in the school discipline process. *See* 34 C.F.R. § 300.530 *et seq.*

Students with disabilities are also provided with protections under Section 504 of the Rehabilitation Act of 1974 (“Section 504”) and Title II of the Americans with Disabilities Act (“ADA”). Section 504 and the ADA prohibit discrimination against students with disabilities. This means that schools are prohibited by federal law from denying students with disabilities equal access to academic courses, field trips, extracurricular activities, school technology, and health services. School officials also have a duty to ensure that students with disabilities are not being discriminated against by being denied necessary accommodations. Restricting access to educational activities and opportunities, ignoring harassment and bullying, and failing to train staff on compliance with these laws is also prohibited under Section 504 and the ADA. *See also* Va. Code § 22.1-213 *et seq.*

RIGHTS OF IMMIGRANT STUDENTS

Schools cannot discriminate against students on the basis of race, color, or national origin. This includes discriminating against students on the basis of their immigration status. Undocumented students have a right to a free public education in your school district regardless of their immigration status, and schools cannot deny students of this right. *See, e.g., Plyler v. Doe*, 457 U.S. 202 (1982). Likewise, schools are not permitted to deny enrollment to a student based on their undocumented status; treat a student differently to determine residency; make inquiries of students or parents that may expose their undocumented status; require social security numbers from parents or students for purposes of enrollment; or engage in any other practices which may chill the right of access to school. Schools cannot turn away students with limited English proficiency; they must be provided with language instruction. *See, e.g., Lau v. Nichols*, 414 U.S. 563 (1974).

School officials should not allow immigration enforcement actions on school grounds without a judicial warrant based on probable cause that a criminal violation of the immigration laws has occurred. Schools should not call immigration authorities on students or consent to any immigration enforcement on school grounds without a criminal warrant. There is no state law requiring any state or local official to contact immigration officials nor any state or federal law prohibiting adoption of a policy that protects students and teachers from immigration action in the absence of a judicial criminal warrant.

RIGHTS OF PREGNANT STUDENTS

Schools are prohibited from excluding pregnant students and students with children under Title IX of the Education Amendments of 1972. This means that schools must also ensure that pregnant students or students with children have access to educational instruction, school activities, and reasonable accommodations, to the same extent that students with temporary medical conditions are given access, including the ability to make up missed classwork and learn in a safe, nonjudgmental environment. Schools are also not allowed to punish students who choose to terminate a pregnancy or to reveal a student's private medical information.



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Dr. Eric L Jones
Powhatan County
2320 Skaggs Rd
Powhatan, VA 23139

RE: Students' Rights Reminder for the 2019-2020 Academic Year

Dear Superintendent,

As our communities prepare for the new academic year and students head back to school, it is important to be aware of the key issues affecting Virginia's students and their rights. Being aware of students' rights under state and federal law can help school officials avoid any potential legal complications and contribute to a positive learning environment that will allow each student to thrive.



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RIGHTS OF STUDENTS WITH DISABILITIES

Students with disabilities are provided legal protections under several federal laws. The Individuals with Disabilities Education Act (“IDEA”) requires that public schools provide eligible students with disabilities a “free, appropriate public education” in the least restrictive environment. *See* 20 U.S.C. § 1400 *et seq.* As part of the IDEA, schools must affirmatively locate, identify, and evaluate children in their district for special education and related services, a process known as “child find.” Parents may also request an evaluation at any time in writing or by speaking to a teacher or administrator, and the school district must respond to the parent’s request. Schools must educate students with disabilities in the least restrictive setting possible, with an emphasis on inclusion and integration in the regular education classroom where feasible. Additionally, students receiving special education services under the IDEA, as well as students suspected of being eligible to receive services, are entitled to certain protections and safeguards in the school discipline process. *See* 34 C.F.R. § 300.530 *et seq.*

Students with disabilities are also provided with protections under Section 504 of the Rehabilitation Act of 1974 (“Section 504”) and Title II of the Americans with Disabilities Act (“ADA”). Section 504 and the ADA prohibit discrimination against students with disabilities. This means that schools are prohibited by federal law from denying students with disabilities equal access to academic courses, field trips, extracurricular activities, school technology, and health services. School officials also have a duty to ensure that students with disabilities are not being discriminated against by being denied necessary accommodations. Restricting access to educational activities and opportunities, ignoring harassment and bullying, and failing to train staff on compliance with these laws is also prohibited under Section 504 and the ADA. *See also* Va. Code § 22.1-213 *et seq.*

RIGHTS OF IMMIGRANT STUDENTS

Schools cannot discriminate against students on the basis of race, color, or national origin. This includes discriminating against students on the basis of their immigration status. Undocumented students have a right to a free public education in your school district regardless of their immigration status, and schools cannot deny students of this right. *See, e.g., Plyler v. Doe*, 457 U.S. 202 (1982). Likewise, schools are not permitted to deny enrollment to a student based on their undocumented status; treat a student differently to determine residency; make inquiries of students or parents that may expose their undocumented status; require social security numbers from parents or students for purposes of enrollment; or engage in any other practices which may chill the right of access to school. Schools cannot turn away students with limited English proficiency; they must be provided with language instruction. *See, e.g., Lau v. Nichols*, 414 U.S. 563 (1974).

School officials should not allow immigration enforcement actions on school grounds without a judicial warrant based on probable cause that a criminal violation of the immigration laws has occurred. Schools should not call immigration authorities on students or consent to any immigration enforcement on school grounds without a criminal warrant. There is no state law requiring any state or local official to contact immigration officials nor any state or federal law prohibiting adoption of a policy that protects students and teachers from immigration action in the absence of a judicial criminal warrant.

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Schools are prohibited from excluding pregnant students and students with children under Title IX of the Education Amendments of 1972. This means that schools must also ensure that pregnant students or students with children have access to educational instruction, school activities, and reasonable accommodations, to the same extent that students with temporary medical conditions are given access, including the ability to make up missed classwork and learn in a safe, nonjudgmental environment. Schools are also not allowed to punish students who choose to terminate a pregnancy or to reveal a student's private medical information.



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Dr. Barbara A Johnson
Prince Edward County
35 Eagle Drive
Farmville, VA 23901

RE: Students' Rights Reminder for the 2019-2020 Academic Year

Dear Superintendent,

As our communities prepare for the new academic year and students head back to school, it is important to be aware of the key issues affecting Virginia's students and their rights. Being aware of students' rights under state and federal law can help school officials avoid any potential legal complications and contribute to a positive learning environment that will allow each student to thrive.



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Federal and state laws afford children enrolled in school protection from discrimination and harassment based on race, color, religion, sex, national origin, or disability. Schools are responsible for ensuring these rights are protected and for promoting a safe school atmosphere. Additionally, schools are responsible for ensuring that students' right to free speech is respected and that the freedom to practice their religion—or no religion at all— is upheld.

Summarized below you will find information regarding: student speech rights; the Pledge of Allegiance; censorship; religious beliefs and accommodations; the rights of students who identify as LGBTQ; discipline and arrests; the rights of students with disabilities; the rights of students who are immigrants; and the rights of students who are pregnant.

We hope this information will help your school district understand the rights of students in schools and guide you in taking actions that ensure student rights are protected in a safe and supportive environment. Please do not hesitate to contact the ACLU of Virginia if you have any questions about these issues or if we can be of any assistance to you in evaluating and formulating school policy on any of these matters. We can be reached at (804) 644-8022 or acluva@acluva.org.

Very truly yours,

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Claire G. Gastañaga
Executive Director



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STUDENT SPEECH RIGHTS

The First Amendment ensures that students cannot be punished for exercising free speech rights, even if administrators do not approve of their message. In the landmark Supreme Court case *Tinker v. Des Moines Independent Community School District*, the ACLU successfully challenged a school district's decision to suspend three students for wearing armbands in protest of the Vietnam War. 393 U.S. 503 (1969). The court declared that students and teachers do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." *Id.* at 506. Over the years, the ACLU has also successfully defended the right of students to wear an anti-abortion armband, a pro-LGBTQ t-shirt, and shirts critical of political figures. Schools may not discipline students for expressing an idea or political viewpoint in class or during school activities, as long as it does not cause a substantial disruption to the school environment.

It is true that the constitutional rights of students in public school are not the same as those of adults exercising First Amendment rights on public streets. Students' speech rights may be limited by reasonable time, place, and manner restrictions because of the unique characteristics of the school environment. A school may limit student speech, for example, through reasonable school-wide policies against cyberbullying. Additionally, schools may prohibit vulgar or offensive speech that is inconsistent with the "fundamental values of public school education." *Bethel Sch. Dist. No. 43 v. Fraser*, 478 U.S. 675, 685-86 (1986).

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RELIGIOUS BELIEFS AND ACCOMMODATIONS

Free Exercise Clause: Under the First Amendment’s Free Exercise Clause, students have the right to worship as they see fit, with only limited restrictions. This means that while at school, students are free to practice their religion or nonreligion and to express themselves religiously without interference by school officials. Students may, for example, wear religious attire or clothing with religious messaging to school; post religious messages or images on their lockers; or bring religious materials, including religious texts or objects, to school. School officials may not, for instance, require students to remove their hijab, yarmulke, or other head covering, as it substantially burdens the practice of the student’s religion. *See, e.g., Va. Code § 22.1-203.1 et seq.; VIRGINIA STATE BOARD OF EDUCATION, GUIDELINES CONCERNING RELIGIOUS ACTIVITY IN THE PUBLIC SCHOOLS* (1995).

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RIGHTS OF LGBTQ STUDENTS

Cultivating a Safe Environment: Bullying of lesbian, gay, bisexual, transgender, and queer (“LGBTQ”) students has been documented as pervasive at many schools and is all too often ignored, or even encouraged, by school officials. LGBTQ students have a right to live their authentic lives and express themselves at school. Students have a right to be out of the closet at school, and conversely, public schools are not allowed to “out” students publicly. School officials and administrators must ensure they are creating a safe learning environment and protecting LGBTQ students from bullying and harassment. *See, e.g., Title IX, 20 U.S.C. § 1681* (schools may be liable if they act with deliberate indifference in failing to protect students from severe harassment on the basis of sex).



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Discipline: The intimate relationships of LGBTQ students must be treated with equal dignity as those of heterosexual students. Policies that prohibit same-sex couples or dates from attending prom, homecoming, or other dance functions violates students’ rights under Title IX of the Education Amendments of 1972, the Equal Protection Clause of the U.S. Constitution, and the Bill of Rights of the Virginia Constitution. LGBTQ students should not be punished more severely than heterosexual students for similar behavior, including for displays of affection.

LGBTQ Student Organizations: Students interested in forming a student organization, typically called a gay-straight alliance (“GSA”), are to be treated the same as students forming any other noncurricular organization or club. *See, e.g., 20 U.S.C. § 4071(a)* (if a school allows any noncurricular student group to meet, it cannot deny other groups the same access based on the content of their interest); *Gay All. of Students v. Matthews*, 544 F.2d 162 (4th Cir. 1976).

Gender Markers, Pronouns, and Student Records: Students should be addressed using their preferred names and pronouns. Refusing to do so, or refusing to update the gender markers on a student’s records when provided with appropriate documentation, may be considered a form of sex-based discrimination under federal law. *See Grimm v. Gloucester County Sch. Bd.*, Civil No. 4:15-cv-52, 2019 U.S. Dist. Lexis 138246 (E.D. Va. Aug. 9, 2019). Likewise, a student’s right to privacy includes a student’s sexual orientation or gender identity. It is against the law for school officials to disclose or compel students to disclose this information, even if the student appears open about their sexual orientation or gender identity. *See C.N. v. Wolf*, 410 F. Supp. 2d 894, 903 (C.D. Cal. 2005).



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DISCIPLINE AND ARRESTS

Generally: School discipline policies and practices should be fair and equitable and should prioritize prevention and intervention rather than harsh punishments like suspension, expulsion, and referral to law enforcement. The goal of discipline should be to teach appropriate behaviors and minimize the time students spend out of class. In Spring 2015, the Center for Public Integrity released a study finding that Virginia led the country in schools referring students to law enforcement, a phenomenon known as the “school-to-prison pipeline.” Additional studies conducted by the Virginia Department of Education found that African American students and students with disabilities were disproportionately represented in both suspensions and referrals to law enforcement throughout Virginia schools. These disparities open up school districts to potential legal challenges for race and disability discrimination under federal civil rights laws. *See, e.g.*, Complaint against Richmond Public Schools, available at <https://acluva.org/en/cases/equal-treatment-richmond-public-school-students>. In order to avoid potential legal problems, and to provide a more equitable school environment, school officials should reevaluate and revise their current discipline policies and practices to create a more positive and preventative approach to student conduct. The Virginia Board of Education has provided a blueprint for schools to use in revising their outdated practices – the Model Guidance for Positive, Preventative Code of Student Conduct Policy and Alternatives to Suspension, available at http://www.doe.virginia.gov/support/student_conduct/index.shtml.

Due Process: The U.S. Constitution requires that students receive due process before disciplinary measures are imposed. This means that school officials must follow certain procedures before they can suspend or expel students from school. Students are generally entitled to receive notice prior to any suspension or expulsion. The notice must include the facts concerning the suspension or expulsion, and the basis for any accusations. The notice must also provide students an opportunity to explain their side. *See, e.g., Goss v. Lopez*, 419 U.S. 565 (1975). For Virginia’s specific procedural requirements, see Va. Code § 22.1-276.01 *et seq.*

Corporal Punishment: Corporal or physical punishment of students is strictly prohibited by Virginia law. *See* Va. Code § 22.1-279.1.

School Resource Officers: School Resource Officers (“SROs”) can protect students from outside danger, but often punish minor behaviors through ticketing and arrests. Law enforcement intervention should typically be a last resort for minor violations best handled by schools as discipline issues. For additional resources on how to limit disproportionate school-based arrests or referrals to law enforcement, visit the Model Guidance for Positive, Preventative Code of Student Conduct Policy and Alternatives to Suspension, available at http://www.doe.virginia.gov/support/student_conduct/index.shtml.



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RIGHTS OF PREGNANT STUDENTS

Schools are prohibited from excluding pregnant students and students with children under Title IX of the Education Amendments of 1972. This means that schools must also ensure that pregnant students or students with children have access to educational instruction, school activities, and reasonable accommodations, to the same extent that students with temporary medical conditions are given access, including the ability to make up missed classwork and learn in a safe, nonjudgmental environment. Schools are also not allowed to punish students who choose to terminate a pregnancy or to reveal a student's private medical information.



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Dr. Lisa Pennycuff
Prince George County
PO Box 400
Prince George, VA 23875

RE: Students' Rights Reminder for the 2019-2020 Academic Year

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Gender Markers, Pronouns, and Student Records: Students should be addressed using their preferred names and pronouns. Refusing to do so, or refusing to update the gender markers on a student’s records when provided with appropriate documentation, may be considered a form of sex-based discrimination under federal law. *See Grimm v. Gloucester County Sch. Bd.*, Civil No. 4:15-cv-52, 2019 U.S. Dist. Lexis 138246 (E.D. Va. Aug. 9, 2019). Likewise, a student’s right to privacy includes a student’s sexual orientation or gender identity. It is against the law for school officials to disclose or compel students to disclose this information, even if the student appears open about their sexual orientation or gender identity. *See C.N. v. Wolf*, 410 F. Supp. 2d 894, 903 (C.D. Cal. 2005).



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DISCIPLINE AND ARRESTS

Generally: School discipline policies and practices should be fair and equitable and should prioritize prevention and intervention rather than harsh punishments like suspension, expulsion, and referral to law enforcement. The goal of discipline should be to teach appropriate behaviors and minimize the time students spend out of class. In Spring 2015, the Center for Public Integrity released a study finding that Virginia led the country in schools referring students to law enforcement, a phenomenon known as the “school-to-prison pipeline.” Additional studies conducted by the Virginia Department of Education found that African American students and students with disabilities were disproportionately represented in both suspensions and referrals to law enforcement throughout Virginia schools. These disparities open up school districts to potential legal challenges for race and disability discrimination under federal civil rights laws. *See, e.g.*, Complaint against Richmond Public Schools, available at <https://acluva.org/en/cases/equal-treatment-richmond-public-school-students>. In order to avoid potential legal problems, and to provide a more equitable school environment, school officials should reevaluate and revise their current discipline policies and practices to create a more positive and preventative approach to student conduct. The Virginia Board of Education has provided a blueprint for schools to use in revising their outdated practices – the Model Guidance for Positive, Preventative Code of Student Conduct Policy and Alternatives to Suspension, available at http://www.doe.virginia.gov/support/student_conduct/index.shtml.

Due Process: The U.S. Constitution requires that students receive due process before disciplinary measures are imposed. This means that school officials must follow certain procedures before they can suspend or expel students from school. Students are generally entitled to receive notice prior to any suspension or expulsion. The notice must include the facts concerning the suspension or expulsion, and the basis for any accusations. The notice must also provide students an opportunity to explain their side. *See, e.g., Goss v. Lopez*, 419 U.S. 565 (1975). For Virginia’s specific procedural requirements, see Va. Code § 22.1-276.01 *et seq.*

Corporal Punishment: Corporal or physical punishment of students is strictly prohibited by Virginia law. *See* Va. Code § 22.1-279.1.

School Resource Officers: School Resource Officers (“SROs”) can protect students from outside danger, but often punish minor behaviors through ticketing and arrests. Law enforcement intervention should typically be a last resort for minor violations best handled by schools as discipline issues. For additional resources on how to limit disproportionate school-based arrests or referrals to law enforcement, visit the Model Guidance for Positive, Preventative Code of Student Conduct Policy and Alternatives to Suspension, available at http://www.doe.virginia.gov/support/student_conduct/index.shtml.



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RIGHTS OF STUDENTS WITH DISABILITIES

Students with disabilities are provided legal protections under several federal laws. The Individuals with Disabilities Education Act (“IDEA”) requires that public schools provide eligible students with disabilities a “free, appropriate public education” in the least restrictive environment. *See* 20 U.S.C. § 1400 *et seq.* As part of the IDEA, schools must affirmatively locate, identify, and evaluate children in their district for special education and related services, a process known as “child find.” Parents may also request an evaluation at any time in writing or by speaking to a teacher or administrator, and the school district must respond to the parent’s request. Schools must educate students with disabilities in the least restrictive setting possible, with an emphasis on inclusion and integration in the regular education classroom where feasible. Additionally, students receiving special education services under the IDEA, as well as students suspected of being eligible to receive services, are entitled to certain protections and safeguards in the school discipline process. *See* 34 C.F.R. § 300.530 *et seq.*

Students with disabilities are also provided with protections under Section 504 of the Rehabilitation Act of 1974 (“Section 504”) and Title II of the Americans with Disabilities Act (“ADA”). Section 504 and the ADA prohibit discrimination against students with disabilities. This means that schools are prohibited by federal law from denying students with disabilities equal access to academic courses, field trips, extracurricular activities, school technology, and health services. School officials also have a duty to ensure that students with disabilities are not being discriminated against by being denied necessary accommodations. Restricting access to educational activities and opportunities, ignoring harassment and bullying, and failing to train staff on compliance with these laws is also prohibited under Section 504 and the ADA. *See also* Va. Code § 22.1-213 *et seq.*

RIGHTS OF IMMIGRANT STUDENTS

Schools cannot discriminate against students on the basis of race, color, or national origin. This includes discriminating against students on the basis of their immigration status. Undocumented students have a right to a free public education in your school district regardless of their immigration status, and schools cannot deny students of this right. *See, e.g., Plyler v. Doe*, 457 U.S. 202 (1982). Likewise, schools are not permitted to deny enrollment to a student based on their undocumented status; treat a student differently to determine residency; make inquiries of students or parents that may expose their undocumented status; require social security numbers from parents or students for purposes of enrollment; or engage in any other practices which may chill the right of access to school. Schools cannot turn away students with limited English proficiency; they must be provided with language instruction. *See, e.g., Lau v. Nichols*, 414 U.S. 563 (1974).

School officials should not allow immigration enforcement actions on school grounds without a judicial warrant based on probable cause that a criminal violation of the immigration laws has occurred. Schools should not call immigration authorities on students or consent to any immigration enforcement on school grounds without a criminal warrant. There is no state law requiring any state or local official to contact immigration officials nor any state or federal law prohibiting adoption of a policy that protects students and teachers from immigration action in the absence of a judicial criminal warrant.

RIGHTS OF PREGNANT STUDENTS

Schools are prohibited from excluding pregnant students and students with children under Title IX of the Education Amendments of 1972. This means that schools must also ensure that pregnant students or students with children have access to educational instruction, school activities, and reasonable accommodations, to the same extent that students with temporary medical conditions are given access, including the ability to make up missed classwork and learn in a safe, nonjudgmental environment. Schools are also not allowed to punish students who choose to terminate a pregnancy or to reveal a student's private medical information.



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Dr. Steven L. Walts
Prince William County
P. O. Box 389
Manassas, VA 20108

RE: Students' Rights Reminder for the 2019-2020 Academic Year

Dear Superintendent,

As our communities prepare for the new academic year and students head back to school, it is important to be aware of the key issues affecting Virginia's students and their rights. Being aware of students' rights under state and federal law can help school officials avoid any potential legal complications and contribute to a positive learning environment that will allow each student to thrive.



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Federal and state laws afford children enrolled in school protection from discrimination and harassment based on race, color, religion, sex, national origin, or disability. Schools are responsible for ensuring these rights are protected and for promoting a safe school atmosphere. Additionally, schools are responsible for ensuring that students' right to free speech is respected and that the freedom to practice their religion—or no religion at all— is upheld.

Summarized below you will find information regarding: student speech rights; the Pledge of Allegiance; censorship; religious beliefs and accommodations; the rights of students who identify as LGBTQ; discipline and arrests; the rights of students with disabilities; the rights of students who are immigrants; and the rights of students who are pregnant.

We hope this information will help your school district understand the rights of students in schools and guide you in taking actions that ensure student rights are protected in a safe and supportive environment. Please do not hesitate to contact the ACLU of Virginia if you have any questions about these issues or if we can be of any assistance to you in evaluating and formulating school policy on any of these matters. We can be reached at (804) 644-8022 or acluva@acluva.org.

Very truly yours,

A handwritten signature in blue ink, which appears to read "Claire G. Gastañaga". The signature is fluid and cursive.

Claire G. Gastañaga
Executive Director



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STUDENT SPEECH RIGHTS

The First Amendment ensures that students cannot be punished for exercising free speech rights, even if administrators do not approve of their message. In the landmark Supreme Court case *Tinker v. Des Moines Independent Community School District*, the ACLU successfully challenged a school district's decision to suspend three students for wearing armbands in protest of the Vietnam War. 393 U.S. 503 (1969). The court declared that students and teachers do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." *Id.* at 506. Over the years, the ACLU has also successfully defended the right of students to wear an anti-abortion armband, a pro-LGBTQ t-shirt, and shirts critical of political figures. Schools may not discipline students for expressing an idea or political viewpoint in class or during school activities, as long as it does not cause a substantial disruption to the school environment.

It is true that the constitutional rights of students in public school are not the same as those of adults exercising First Amendment rights on public streets. Students' speech rights may be limited by reasonable time, place, and manner restrictions because of the unique characteristics of the school environment. A school may limit student speech, for example, through reasonable school-wide policies against cyberbullying. Additionally, schools may prohibit vulgar or offensive speech that is inconsistent with the "fundamental values of public school education." *Bethel Sch. Dist. No. 43 v. Fraser*, 478 U.S. 675, 685-86 (1986).

School officials should take care, however, not to define peaceful assembly as behavior that causes a substantial disruption to school activities. If students engage in a walkout, school officials may choose to discipline students for missing class but may not engage in harsher punishment because of the message or political nature of the action. School officials must not draw distinctions based on the content of a student's speech or expressive activity in imposing discipline.

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Schools cannot punish students for refusing to salute the flag or say the Pledge of Allegiance. *W.Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624 (1943); *Sherman v. Comm. Consol. Sch. Dist. 21*, 980 F.2d 437 (7th Cir. 1992). School officials also cannot force students to stand during the Pledge of Allegiance or leave the room if a student refuses to recite the Pledge. *See* Va. Code § 22.1-202(C) ("[N]o student shall be compelled to recite the Pledge if he, his parent or legal guardian objects on religious, philosophical or other grounds to his participating in this exercise.")

CENSORSHIP

Books: Banning books, removing books and materials from a classroom or library, or otherwise making it difficult for students to read a broad array of literature limits intellectual freedom. Making books and ideas unavailable based on their content or viewpoint or taking books out of schools because they are controversial, unpopular, or offensive, may violate the First Amendment. *See, e.g., Bd. of Educ. v. Pico*, 457 U.S. 853 (1982). Courts view school libraries as the main place where students exercise their freedom "to inquire, to study and to evaluate, to gain new maturity and understanding." *Id.* at 868.

Student Publications: Schools may review and control the content of school sponsored student publications including student newspapers, yearbooks, literary magazines, on-campus videos, and radio broadcasts. But schools cannot control student publications that are not sponsored or funded by the school, not done as part of a class or school project, or that are done on a student’s own time with their own resources. *See, e.g., Burt v. Barker*, 861 F.2d 1149 (9th Cir. 1988); *Fujishima v. Bd. of Ed.*, 160 F.2d 1355 (7th Cir. 1972); *Eisner v. Stanford Bd. of Ed.*, 440 F.2d 803 (2d Cir. 1971).

RELIGIOUS BELIEFS AND ACCOMMODATIONS

Free Exercise Clause: Under the First Amendment’s Free Exercise Clause, students have the right to worship as they see fit, with only limited restrictions. This means that while at school, students are free to practice their religion or nonreligion and to express themselves religiously without interference by school officials. Students may, for example, wear religious attire or clothing with religious messaging to school; post religious messages or images on their lockers; or bring religious materials, including religious texts or objects, to school. School officials may not, for instance, require students to remove their hijab, yarmulke, or other head covering, as it substantially burdens the practice of the student’s religion. *See, e.g., Va. Code § 22.1-203.1 et seq.; VIRGINIA STATE BOARD OF EDUCATION, GUIDELINES CONCERNING RELIGIOUS ACTIVITY IN THE PUBLIC SCHOOLS* (1995).

Establishment Clause: Under the First Amendment’s Establishment Clause, school officials cannot favor one religion over another or favor religion over nonbelief. In practice, this means that school officials and teachers cannot conduct prayer or bible-reading sessions, organize or participate in student-led prayer, or hold a prayer at graduation or sporting events, even when participation is voluntary. *See, e.g., Abington Sch. Dist. v. Schempp*, 374 U.S. 203 (1963); *Engel v. Vitale*, 370 U.S. 421 (1962); *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 308 (2000); *Lee v. Weisman*, 505 U.S. 577 (1992). Teachers cannot lead students in devotional activities or encourage student participation in religious activity before or after school, during class, or at school-sponsored activities. In fact, in the public-school context, the Supreme Court has invalidated almost every instance of school- or teacher-sponsored religious expression. Under Virginia law, school boards are permitted to establish a daily observance of one minute of silence, but the school board must be careful to ensure that its policy has secular justifications and is not merely a pretense to encourage prayer. *See, e.g., Va. Code § 22.1-203; VIRGINIA STATE BOARD OF EDUCATION, GUIDELINES CONCERNING RELIGIOUS ACTIVITY IN THE PUBLIC SCHOOLS* (1995).

RIGHTS OF LGBTQ STUDENTS

Cultivating a Safe Environment: Bullying of lesbian, gay, bisexual, transgender, and queer (“LGBTQ”) students has been documented as pervasive at many schools and is all too often ignored, or even encouraged, by school officials. LGBTQ students have a right to live their authentic lives and express themselves at school. Students have a right to be out of the closet at school, and conversely, public schools are not allowed to “out” students publicly. School officials and administrators must ensure they are creating a safe learning environment and protecting LGBTQ students from bullying and harassment. *See, e.g., Title IX, 20 U.S.C. § 1681* (schools may be liable if they act with deliberate indifference in failing to protect students from severe harassment on the basis of sex).



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Restrooms & Locker Rooms: Transgender students must be allowed to use the restroom facilities consistent with their gender identity. Schools cannot create policies that require transgender students to use restrooms or locker rooms that do not correspond with their gender identity, and schools may not create policies that require transgender students to use single-user facilities. *See Grimm v. Gloucester County Sch. Bd.*, Civil No. 4:15-cv-52, 2019 U.S. Dist. Lexis 138246 (E.D. Va. Aug. 9, 2019).

Dress Code: School officials cannot force students to wear clothing inconsistent with their gender identity. Public schools may have dress codes, but dress codes cannot treat students differently based on their gender, force students to conform to sex stereotypes, or censor particular viewpoints. Schools cannot enact dress codes based on the stereotype that only girls can wear some types of clothes and only boys wear other types of clothes. *See, e.g., U.S. v. Virginia*, 518 U.S. 515, 533 (1996) (government actors must not treat male and female students differently because of “overbroad generalizations about the different talents, capacities, or preferences of males and females.”). Schools may, for example, require that skirts be a certain length; however, they cannot require that some students wear skirts and prohibit others from doing so based on the student’s sex or gender expression. This also applies to pants, ties, or other clothing associated with traditional gender roles. And it applies to attire requirements for homecoming, prom, graduation, and other special school events.

Discipline: The intimate relationships of LGBTQ students must be treated with equal dignity as those of heterosexual students. Policies that prohibit same-sex couples or dates from attending prom, homecoming, or other dance functions violates students’ rights under Title IX of the Education Amendments of 1972, the Equal Protection Clause of the U.S. Constitution, and the Bill of Rights of the Virginia Constitution. LGBTQ students should not be punished more severely than heterosexual students for similar behavior, including for displays of affection.

LGBTQ Student Organizations: Students interested in forming a student organization, typically called a gay-straight alliance (“GSA”), are to be treated the same as students forming any other noncurricular organization or club. *See, e.g., 20 U.S.C. § 4071(a)* (if a school allows any noncurricular student group to meet, it cannot deny other groups the same access based on the content of their interest); *Gay All. of Students v. Matthews*, 544 F.2d 162 (4th Cir. 1976).

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DISCIPLINE AND ARRESTS

Generally: School discipline policies and practices should be fair and equitable and should prioritize prevention and intervention rather than harsh punishments like suspension, expulsion, and referral to law enforcement. The goal of discipline should be to teach appropriate behaviors and minimize the time students spend out of class. In Spring 2015, the Center for Public Integrity released a study finding that Virginia led the country in schools referring students to law enforcement, a phenomenon known as the “school-to-prison pipeline.” Additional studies conducted by the Virginia Department of Education found that African American students and students with disabilities were disproportionately represented in both suspensions and referrals to law enforcement throughout Virginia schools. These disparities open up school districts to potential legal challenges for race and disability discrimination under federal civil rights laws. *See, e.g.*, Complaint against Richmond Public Schools, available at <https://acluva.org/en/cases/equal-treatment-richmond-public-school-students>. In order to avoid potential legal problems, and to provide a more equitable school environment, school officials should reevaluate and revise their current discipline policies and practices to create a more positive and preventative approach to student conduct. The Virginia Board of Education has provided a blueprint for schools to use in revising their outdated practices – the Model Guidance for Positive, Preventative Code of Student Conduct Policy and Alternatives to Suspension, available at http://www.doe.virginia.gov/support/student_conduct/index.shtml.

Due Process: The U.S. Constitution requires that students receive due process before disciplinary measures are imposed. This means that school officials must follow certain procedures before they can suspend or expel students from school. Students are generally entitled to receive notice prior to any suspension or expulsion. The notice must include the facts concerning the suspension or expulsion, and the basis for any accusations. The notice must also provide students an opportunity to explain their side. *See, e.g., Goss v. Lopez*, 419 U.S. 565 (1975). For Virginia’s specific procedural requirements, see Va. Code § 22.1-276.01 *et seq.*

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RIGHTS OF STUDENTS WITH DISABILITIES

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RIGHTS OF IMMIGRANT STUDENTS

Schools cannot discriminate against students on the basis of race, color, or national origin. This includes discriminating against students on the basis of their immigration status. Undocumented students have a right to a free public education in your school district regardless of their immigration status, and schools cannot deny students of this right. *See, e.g., Plyler v. Doe*, 457 U.S. 202 (1982). Likewise, schools are not permitted to deny enrollment to a student based on their undocumented status; treat a student differently to determine residency; make inquiries of students or parents that may expose their undocumented status; require social security numbers from parents or students for purposes of enrollment; or engage in any other practices which may chill the right of access to school. Schools cannot turn away students with limited English proficiency; they must be provided with language instruction. *See, e.g., Lau v. Nichols*, 414 U.S. 563 (1974).

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RIGHTS OF PREGNANT STUDENTS

Schools are prohibited from excluding pregnant students and students with children under Title IX of the Education Amendments of 1972. This means that schools must also ensure that pregnant students or students with children have access to educational instruction, school activities, and reasonable accommodations, to the same extent that students with temporary medical conditions are given access, including the ability to make up missed classwork and learn in a safe, nonjudgmental environment. Schools are also not allowed to punish students who choose to terminate a pregnancy or to reveal a student's private medical information.



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Dr. Kevin Siers
Pulaski County
202 N Washington Ave
Pulaski, VA 24301

RE: Students' Rights Reminder for the 2019-2020 Academic Year

Dear Superintendent,

As our communities prepare for the new academic year and students head back to school, it is important to be aware of the key issues affecting Virginia's students and their rights. Being aware of students' rights under state and federal law can help school officials avoid any potential legal complications and contribute to a positive learning environment that will allow each student to thrive.



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Summarized below you will find information regarding: student speech rights; the Pledge of Allegiance; censorship; religious beliefs and accommodations; the rights of students who identify as LGBTQ; discipline and arrests; the rights of students with disabilities; the rights of students who are immigrants; and the rights of students who are pregnant.

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Claire G. Gastañaga
Executive Director



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Establishment Clause: Under the First Amendment’s Establishment Clause, school officials cannot favor one religion over another or favor religion over nonbelief. In practice, this means that school officials and teachers cannot conduct prayer or bible-reading sessions, organize or participate in student-led prayer, or hold a prayer at graduation or sporting events, even when participation is voluntary. *See, e.g., Abington Sch. Dist. v. Schempp*, 374 U.S. 203 (1963); *Engel v. Vitale*, 370 U.S. 421 (1962); *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 308 (2000); *Lee v. Weisman*, 505 U.S. 577 (1992). Teachers cannot lead students in devotional activities or encourage student participation in religious activity before or after school, during class, or at school-sponsored activities. In fact, in the public-school context, the Supreme Court has invalidated almost every instance of school- or teacher-sponsored religious expression. Under Virginia law, school boards are permitted to establish a daily observance of one minute of silence, but the school board must be careful to ensure that its policy has secular justifications and is not merely a pretense to encourage prayer. *See, e.g., Va. Code § 22.1-203; VIRGINIA STATE BOARD OF EDUCATION, GUIDELINES CONCERNING RELIGIOUS ACTIVITY IN THE PUBLIC SCHOOLS* (1995).

RIGHTS OF LGBTQ STUDENTS

Cultivating a Safe Environment: Bullying of lesbian, gay, bisexual, transgender, and queer (“LGBTQ”) students has been documented as pervasive at many schools and is all too often ignored, or even encouraged, by school officials. LGBTQ students have a right to live their authentic lives and express themselves at school. Students have a right to be out of the closet at school, and conversely, public schools are not allowed to “out” students publicly. School officials and administrators must ensure they are creating a safe learning environment and protecting LGBTQ students from bullying and harassment. *See, e.g., Title IX, 20 U.S.C. § 1681* (schools may be liable if they act with deliberate indifference in failing to protect students from severe harassment on the basis of sex).



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Discipline: The intimate relationships of LGBTQ students must be treated with equal dignity as those of heterosexual students. Policies that prohibit same-sex couples or dates from attending prom, homecoming, or other dance functions violates students’ rights under Title IX of the Education Amendments of 1972, the Equal Protection Clause of the U.S. Constitution, and the Bill of Rights of the Virginia Constitution. LGBTQ students should not be punished more severely than heterosexual students for similar behavior, including for displays of affection.

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Gender Markers, Pronouns, and Student Records: Students should be addressed using their preferred names and pronouns. Refusing to do so, or refusing to update the gender markers on a student’s records when provided with appropriate documentation, may be considered a form of sex-based discrimination under federal law. *See Grimm v. Gloucester County Sch. Bd.*, Civil No. 4:15-cv-52, 2019 U.S. Dist. Lexis 138246 (E.D. Va. Aug. 9, 2019). Likewise, a student’s right to privacy includes a student’s sexual orientation or gender identity. It is against the law for school officials to disclose or compel students to disclose this information, even if the student appears open about their sexual orientation or gender identity. *See C.N. v. Wolf*, 410 F. Supp. 2d 894, 903 (C.D. Cal. 2005).



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Corporal Punishment: Corporal or physical punishment of students is strictly prohibited by Virginia law. *See* Va. Code § 22.1-279.1.

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Students with disabilities are provided legal protections under several federal laws. The Individuals with Disabilities Education Act (“IDEA”) requires that public schools provide eligible students with disabilities a “free, appropriate public education” in the least restrictive environment. *See* 20 U.S.C. § 1400 *et seq.* As part of the IDEA, schools must affirmatively locate, identify, and evaluate children in their district for special education and related services, a process known as “child find.” Parents may also request an evaluation at any time in writing or by speaking to a teacher or administrator, and the school district must respond to the parent’s request. Schools must educate students with disabilities in the least restrictive setting possible, with an emphasis on inclusion and integration in the regular education classroom where feasible. Additionally, students receiving special education services under the IDEA, as well as students suspected of being eligible to receive services, are entitled to certain protections and safeguards in the school discipline process. *See* 34 C.F.R. § 300.530 *et seq.*

Students with disabilities are also provided with protections under Section 504 of the Rehabilitation Act of 1974 (“Section 504”) and Title II of the Americans with Disabilities Act (“ADA”). Section 504 and the ADA prohibit discrimination against students with disabilities. This means that schools are prohibited by federal law from denying students with disabilities equal access to academic courses, field trips, extracurricular activities, school technology, and health services. School officials also have a duty to ensure that students with disabilities are not being discriminated against by being denied necessary accommodations. Restricting access to educational activities and opportunities, ignoring harassment and bullying, and failing to train staff on compliance with these laws is also prohibited under Section 504 and the ADA. *See also* Va. Code § 22.1-213 *et seq.*

RIGHTS OF IMMIGRANT STUDENTS

Schools cannot discriminate against students on the basis of race, color, or national origin. This includes discriminating against students on the basis of their immigration status. Undocumented students have a right to a free public education in your school district regardless of their immigration status, and schools cannot deny students of this right. *See, e.g., Plyler v. Doe*, 457 U.S. 202 (1982). Likewise, schools are not permitted to deny enrollment to a student based on their undocumented status; treat a student differently to determine residency; make inquiries of students or parents that may expose their undocumented status; require social security numbers from parents or students for purposes of enrollment; or engage in any other practices which may chill the right of access to school. Schools cannot turn away students with limited English proficiency; they must be provided with language instruction. *See, e.g., Lau v. Nichols*, 414 U.S. 563 (1974).

School officials should not allow immigration enforcement actions on school grounds without a judicial warrant based on probable cause that a criminal violation of the immigration laws has occurred. Schools should not call immigration authorities on students or consent to any immigration enforcement on school grounds without a criminal warrant. There is no state law requiring any state or local official to contact immigration officials nor any state or federal law prohibiting adoption of a policy that protects students and teachers from immigration action in the absence of a judicial criminal warrant.

RIGHTS OF PREGNANT STUDENTS

Schools are prohibited from excluding pregnant students and students with children under Title IX of the Education Amendments of 1972. This means that schools must also ensure that pregnant students or students with children have access to educational instruction, school activities, and reasonable accommodations, to the same extent that students with temporary medical conditions are given access, including the ability to make up missed classwork and learn in a safe, nonjudgmental environment. Schools are also not allowed to punish students who choose to terminate a pregnancy or to reveal a student's private medical information.



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Mr. Robert Graham
Radford
1612 Wadworth St.
Radford, VA 24141

RE: Students' Rights Reminder for the 2019-2020 Academic Year

Dear Superintendent,

As our communities prepare for the new academic year and students head back to school, it is important to be aware of the key issues affecting Virginia's students and their rights. Being aware of students' rights under state and federal law can help school officials avoid any potential legal complications and contribute to a positive learning environment that will allow each student to thrive.



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Federal and state laws afford children enrolled in school protection from discrimination and harassment based on race, color, religion, sex, national origin, or disability. Schools are responsible for ensuring these rights are protected and for promoting a safe school atmosphere. Additionally, schools are responsible for ensuring that students' right to free speech is respected and that the freedom to practice their religion—or no religion at all— is upheld.

Summarized below you will find information regarding: student speech rights; the Pledge of Allegiance; censorship; religious beliefs and accommodations; the rights of students who identify as LGBTQ; discipline and arrests; the rights of students with disabilities; the rights of students who are immigrants; and the rights of students who are pregnant.

We hope this information will help your school district understand the rights of students in schools and guide you in taking actions that ensure student rights are protected in a safe and supportive environment. Please do not hesitate to contact the ACLU of Virginia if you have any questions about these issues or if we can be of any assistance to you in evaluating and formulating school policy on any of these matters. We can be reached at (804) 644-8022 or acluva@acluva.org.

Very truly yours,

A handwritten signature in blue ink, which appears to read "Claire G. Gastañaga". The signature is fluid and cursive.

Claire G. Gastañaga
Executive Director



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STUDENT SPEECH RIGHTS

The First Amendment ensures that students cannot be punished for exercising free speech rights, even if administrators do not approve of their message. In the landmark Supreme Court case *Tinker v. Des Moines Independent Community School District*, the ACLU successfully challenged a school district's decision to suspend three students for wearing armbands in protest of the Vietnam War. 393 U.S. 503 (1969). The court declared that students and teachers do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." *Id.* at 506. Over the years, the ACLU has also successfully defended the right of students to wear an anti-abortion armband, a pro-LGBTQ t-shirt, and shirts critical of political figures. Schools may not discipline students for expressing an idea or political viewpoint in class or during school activities, as long as it does not cause a substantial disruption to the school environment.

It is true that the constitutional rights of students in public school are not the same as those of adults exercising First Amendment rights on public streets. Students' speech rights may be limited by reasonable time, place, and manner restrictions because of the unique characteristics of the school environment. A school may limit student speech, for example, through reasonable school-wide policies against cyberbullying. Additionally, schools may prohibit vulgar or offensive speech that is inconsistent with the "fundamental values of public school education." *Bethel Sch. Dist. No. 43 v. Fraser*, 478 U.S. 675, 685-86 (1986).

School officials should take care, however, not to define peaceful assembly as behavior that causes a substantial disruption to school activities. If students engage in a walkout, school officials may choose to discipline students for missing class but may not engage in harsher punishment because of the message or political nature of the action. School officials must not draw distinctions based on the content of a student's speech or expressive activity in imposing discipline.

PLEDGE OF ALLEGIANCE

Schools cannot punish students for refusing to salute the flag or say the Pledge of Allegiance. *W.Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624 (1943); *Sherman v. Comm. Consol. Sch. Dist. 21*, 980 F.2d 437 (7th Cir. 1992). School officials also cannot force students to stand during the Pledge of Allegiance or leave the room if a student refuses to recite the Pledge. *See* Va. Code § 22.1-202(C) ("[N]o student shall be compelled to recite the Pledge if he, his parent or legal guardian objects on religious, philosophical or other grounds to his participating in this exercise.")

CENSORSHIP

Books: Banning books, removing books and materials from a classroom or library, or otherwise making it difficult for students to read a broad array of literature limits intellectual freedom. Making books and ideas unavailable based on their content or viewpoint or taking books out of schools because they are controversial, unpopular, or offensive, may violate the First Amendment. *See, e.g., Bd. of Educ. v. Pico*, 457 U.S. 853 (1982). Courts view school libraries as the main place where students exercise their freedom "to inquire, to study and to evaluate, to gain new maturity and understanding." *Id.* at 868.

Student Publications: Schools may review and control the content of school sponsored student publications including student newspapers, yearbooks, literary magazines, on-campus videos, and radio broadcasts. But schools cannot control student publications that are not sponsored or funded by the school, not done as part of a class or school project, or that are done on a student’s own time with their own resources. *See, e.g., Burt v. Barker*, 861 F.2d 1149 (9th Cir. 1988); *Fujishima v. Bd. of Ed.*, 160 F.2d 1355 (7th Cir. 1972); *Eisner v. Stanford Bd. of Ed.*, 440 F.2d 803 (2d Cir. 1971).

RELIGIOUS BELIEFS AND ACCOMMODATIONS

Free Exercise Clause: Under the First Amendment’s Free Exercise Clause, students have the right to worship as they see fit, with only limited restrictions. This means that while at school, students are free to practice their religion or nonreligion and to express themselves religiously without interference by school officials. Students may, for example, wear religious attire or clothing with religious messaging to school; post religious messages or images on their lockers; or bring religious materials, including religious texts or objects, to school. School officials may not, for instance, require students to remove their hijab, yarmulke, or other head covering, as it substantially burdens the practice of the student’s religion. *See, e.g., Va. Code § 22.1-203.1 et seq.*; VIRGINIA STATE BOARD OF EDUCATION, GUIDELINES CONCERNING RELIGIOUS ACTIVITY IN THE PUBLIC SCHOOLS (1995).

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Dr. Shannon Grimsley
Rappahannock County
6 Schoolhouse Road
Washington, VA 22747

RE: Students' Rights Reminder for the 2019-2020 Academic Year

Dear Superintendent,

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Very truly yours,

A handwritten signature in blue ink, which appears to read "Claire G. Gastañaga". The signature is fluid and cursive.

Claire G. Gastañaga
Executive Director



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STUDENT SPEECH RIGHTS

The First Amendment ensures that students cannot be punished for exercising free speech rights, even if administrators do not approve of their message. In the landmark Supreme Court case *Tinker v. Des Moines Independent Community School District*, the ACLU successfully challenged a school district's decision to suspend three students for wearing armbands in protest of the Vietnam War. 393 U.S. 503 (1969). The court declared that students and teachers do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." *Id.* at 506. Over the years, the ACLU has also successfully defended the right of students to wear an anti-abortion armband, a pro-LGBTQ t-shirt, and shirts critical of political figures. Schools may not discipline students for expressing an idea or political viewpoint in class or during school activities, as long as it does not cause a substantial disruption to the school environment.

It is true that the constitutional rights of students in public school are not the same as those of adults exercising First Amendment rights on public streets. Students' speech rights may be limited by reasonable time, place, and manner restrictions because of the unique characteristics of the school environment. A school may limit student speech, for example, through reasonable school-wide policies against cyberbullying. Additionally, schools may prohibit vulgar or offensive speech that is inconsistent with the "fundamental values of public school education." *Bethel Sch. Dist. No. 43 v. Fraser*, 478 U.S. 675, 685-86 (1986).

School officials should take care, however, not to define peaceful assembly as behavior that causes a substantial disruption to school activities. If students engage in a walkout, school officials may choose to discipline students for missing class but may not engage in harsher punishment because of the message or political nature of the action. School officials must not draw distinctions based on the content of a student's speech or expressive activity in imposing discipline.

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RIGHTS OF LGBTQ STUDENTS

Cultivating a Safe Environment: Bullying of lesbian, gay, bisexual, transgender, and queer (“LGBTQ”) students has been documented as pervasive at many schools and is all too often ignored, or even encouraged, by school officials. LGBTQ students have a right to live their authentic lives and express themselves at school. Students have a right to be out of the closet at school, and conversely, public schools are not allowed to “out” students publicly. School officials and administrators must ensure they are creating a safe learning environment and protecting LGBTQ students from bullying and harassment. *See, e.g., Title IX, 20 U.S.C. § 1681* (schools may be liable if they act with deliberate indifference in failing to protect students from severe harassment on the basis of sex).



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Gender Markers, Pronouns, and Student Records: Students should be addressed using their preferred names and pronouns. Refusing to do so, or refusing to update the gender markers on a student’s records when provided with appropriate documentation, may be considered a form of sex-based discrimination under federal law. *See Grimm v. Gloucester County Sch. Bd.*, Civil No. 4:15-cv-52, 2019 U.S. Dist. Lexis 138246 (E.D. Va. Aug. 9, 2019). Likewise, a student’s right to privacy includes a student’s sexual orientation or gender identity. It is against the law for school officials to disclose or compel students to disclose this information, even if the student appears open about their sexual orientation or gender identity. *See C.N. v. Wolf*, 410 F. Supp. 2d 894, 903 (C.D. Cal. 2005).



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DISCIPLINE AND ARRESTS

Generally: School discipline policies and practices should be fair and equitable and should prioritize prevention and intervention rather than harsh punishments like suspension, expulsion, and referral to law enforcement. The goal of discipline should be to teach appropriate behaviors and minimize the time students spend out of class. In Spring 2015, the Center for Public Integrity released a study finding that Virginia led the country in schools referring students to law enforcement, a phenomenon known as the “school-to-prison pipeline.” Additional studies conducted by the Virginia Department of Education found that African American students and students with disabilities were disproportionately represented in both suspensions and referrals to law enforcement throughout Virginia schools. These disparities open up school districts to potential legal challenges for race and disability discrimination under federal civil rights laws. *See, e.g.*, Complaint against Richmond Public Schools, available at <https://acluva.org/en/cases/equal-treatment-richmond-public-school-students>. In order to avoid potential legal problems, and to provide a more equitable school environment, school officials should reevaluate and revise their current discipline policies and practices to create a more positive and preventative approach to student conduct. The Virginia Board of Education has provided a blueprint for schools to use in revising their outdated practices – the Model Guidance for Positive, Preventative Code of Student Conduct Policy and Alternatives to Suspension, available at http://www.doe.virginia.gov/support/student_conduct/index.shtml.

Due Process: The U.S. Constitution requires that students receive due process before disciplinary measures are imposed. This means that school officials must follow certain procedures before they can suspend or expel students from school. Students are generally entitled to receive notice prior to any suspension or expulsion. The notice must include the facts concerning the suspension or expulsion, and the basis for any accusations. The notice must also provide students an opportunity to explain their side. *See, e.g., Goss v. Lopez*, 419 U.S. 565 (1975). For Virginia’s specific procedural requirements, see Va. Code § 22.1-276.01 *et seq.*

Corporal Punishment: Corporal or physical punishment of students is strictly prohibited by Virginia law. *See* Va. Code § 22.1-279.1.

School Resource Officers: School Resource Officers (“SROs”) can protect students from outside danger, but often punish minor behaviors through ticketing and arrests. Law enforcement intervention should typically be a last resort for minor violations best handled by schools as discipline issues. For additional resources on how to limit disproportionate school-based arrests or referrals to law enforcement, visit the Model Guidance for Positive, Preventative Code of Student Conduct Policy and Alternatives to Suspension, available at http://www.doe.virginia.gov/support/student_conduct/index.shtml.



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RIGHTS OF STUDENTS WITH DISABILITIES

Students with disabilities are provided legal protections under several federal laws. The Individuals with Disabilities Education Act (“IDEA”) requires that public schools provide eligible students with disabilities a “free, appropriate public education” in the least restrictive environment. *See* 20 U.S.C. § 1400 *et seq.* As part of the IDEA, schools must affirmatively locate, identify, and evaluate children in their district for special education and related services, a process known as “child find.” Parents may also request an evaluation at any time in writing or by speaking to a teacher or administrator, and the school district must respond to the parent’s request. Schools must educate students with disabilities in the least restrictive setting possible, with an emphasis on inclusion and integration in the regular education classroom where feasible. Additionally, students receiving special education services under the IDEA, as well as students suspected of being eligible to receive services, are entitled to certain protections and safeguards in the school discipline process. *See* 34 C.F.R. § 300.530 *et seq.*

Students with disabilities are also provided with protections under Section 504 of the Rehabilitation Act of 1974 (“Section 504”) and Title II of the Americans with Disabilities Act (“ADA”). Section 504 and the ADA prohibit discrimination against students with disabilities. This means that schools are prohibited by federal law from denying students with disabilities equal access to academic courses, field trips, extracurricular activities, school technology, and health services. School officials also have a duty to ensure that students with disabilities are not being discriminated against by being denied necessary accommodations. Restricting access to educational activities and opportunities, ignoring harassment and bullying, and failing to train staff on compliance with these laws is also prohibited under Section 504 and the ADA. *See also* Va. Code § 22.1-213 *et seq.*

RIGHTS OF IMMIGRANT STUDENTS

Schools cannot discriminate against students on the basis of race, color, or national origin. This includes discriminating against students on the basis of their immigration status. Undocumented students have a right to a free public education in your school district regardless of their immigration status, and schools cannot deny students of this right. *See, e.g., Plyler v. Doe*, 457 U.S. 202 (1982). Likewise, schools are not permitted to deny enrollment to a student based on their undocumented status; treat a student differently to determine residency; make inquiries of students or parents that may expose their undocumented status; require social security numbers from parents or students for purposes of enrollment; or engage in any other practices which may chill the right of access to school. Schools cannot turn away students with limited English proficiency; they must be provided with language instruction. *See, e.g., Lau v. Nichols*, 414 U.S. 563 (1974).

School officials should not allow immigration enforcement actions on school grounds without a judicial warrant based on probable cause that a criminal violation of the immigration laws has occurred. Schools should not call immigration authorities on students or consent to any immigration enforcement on school grounds without a criminal warrant. There is no state law requiring any state or local official to contact immigration officials nor any state or federal law prohibiting adoption of a policy that protects students and teachers from immigration action in the absence of a judicial criminal warrant.

RIGHTS OF PREGNANT STUDENTS

Schools are prohibited from excluding pregnant students and students with children under Title IX of the Education Amendments of 1972. This means that schools must also ensure that pregnant students or students with children have access to educational instruction, school activities, and reasonable accommodations, to the same extent that students with temporary medical conditions are given access, including the ability to make up missed classwork and learn in a safe, nonjudgmental environment. Schools are also not allowed to punish students who choose to terminate a pregnancy or to reveal a student's private medical information.



AMERICAN CIVIL LIBERTIES UNION
FOUNDATION

Virginia

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RE: Students' Rights Reminder for the 2019-2020 Academic Year

Dear Superintendent,

As our communities prepare for the new academic year and students head back to school, it is important to be aware of the key issues affecting Virginia's students and their rights. Being aware of students' rights under state and federal law can help school officials avoid any potential legal complications and contribute to a positive learning environment that will allow each student to thrive.



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Federal and state laws afford children enrolled in school protection from discrimination and harassment based on race, color, religion, sex, national origin, or disability. Schools are responsible for ensuring these rights are protected and for promoting a safe school atmosphere. Additionally, schools are responsible for ensuring that students' right to free speech is respected and that the freedom to practice their religion—or no religion at all—is upheld.

Summarized below you will find information regarding: student speech rights; the Pledge of Allegiance; censorship; religious beliefs and accommodations; the rights of students who identify as LGBTQ; discipline and arrests; the rights of students with disabilities; the rights of students who are immigrants; and the rights of students who are pregnant.

We hope this information will help your school district understand the rights of students in schools and guide you in taking actions that ensure student rights are protected in a safe and supportive environment. Please do not hesitate to contact the ACLU of Virginia if you have any questions about these issues or if we can be of any assistance to you in evaluating and formulating school policy on any of these matters. We can be reached at (804) 644-8022 or acluva@acluva.org.

Very truly yours,

A handwritten signature in blue ink, which appears to read "Claire G. Gastañaga". The signature is fluid and cursive.

Claire G. Gastañaga
Executive Director



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Schools cannot discriminate against students on the basis of race, color, or national origin. This includes discriminating against students on the basis of their immigration status. Undocumented students have a right to a free public education in your school district regardless of their immigration status, and schools cannot deny students of this right. *See, e.g., Plyler v. Doe*, 457 U.S. 202 (1982). Likewise, schools are not permitted to deny enrollment to a student based on their undocumented status; treat a student differently to determine residency; make inquiries of students or parents that may expose their undocumented status; require social security numbers from parents or students for purposes of enrollment; or engage in any other practices which may chill the right of access to school. Schools cannot turn away students with limited English proficiency; they must be provided with language instruction. *See, e.g., Lau v. Nichols*, 414 U.S. 563 (1974).

School officials should not allow immigration enforcement actions on school grounds without a judicial warrant based on probable cause that a criminal violation of the immigration laws has occurred. Schools should not call immigration authorities on students or consent to any immigration enforcement on school grounds without a criminal warrant. There is no state law requiring any state or local official to contact immigration officials nor any state or federal law prohibiting adoption of a policy that protects students and teachers from immigration action in the absence of a judicial criminal warrant.

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Schools are prohibited from excluding pregnant students and students with children under Title IX of the Education Amendments of 1972. This means that schools must also ensure that pregnant students or students with children have access to educational instruction, school activities, and reasonable accommodations, to the same extent that students with temporary medical conditions are given access, including the ability to make up missed classwork and learn in a safe, nonjudgmental environment. Schools are also not allowed to punish students who choose to terminate a pregnancy or to reveal a student's private medical information.



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Dr. James Gregory Smith
Richmond County
PO Box 1507
Warsaw, VA 22572

RE: Students' Rights Reminder for the 2019-2020 Academic Year

Dear Superintendent,

As our communities prepare for the new academic year and students head back to school, it is important to be aware of the key issues affecting Virginia's students and their rights. Being aware of students' rights under state and federal law can help school officials avoid any potential legal complications and contribute to a positive learning environment that will allow each student to thrive.



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Federal and state laws afford children enrolled in school protection from discrimination and harassment based on race, color, religion, sex, national origin, or disability. Schools are responsible for ensuring these rights are protected and for promoting a safe school atmosphere. Additionally, schools are responsible for ensuring that students' right to free speech is respected and that the freedom to practice their religion—or no religion at all— is upheld.

Summarized below you will find information regarding: student speech rights; the Pledge of Allegiance; censorship; religious beliefs and accommodations; the rights of students who identify as LGBTQ; discipline and arrests; the rights of students with disabilities; the rights of students who are immigrants; and the rights of students who are pregnant.

We hope this information will help your school district understand the rights of students in schools and guide you in taking actions that ensure student rights are protected in a safe and supportive environment. Please do not hesitate to contact the ACLU of Virginia if you have any questions about these issues or if we can be of any assistance to you in evaluating and formulating school policy on any of these matters. We can be reached at (804) 644-8022 or acluva@acluva.org.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Claire G. Gastañaga". The signature is fluid and cursive.

Claire G. Gastañaga
Executive Director



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STUDENT SPEECH RIGHTS

The First Amendment ensures that students cannot be punished for exercising free speech rights, even if administrators do not approve of their message. In the landmark Supreme Court case *Tinker v. Des Moines Independent Community School District*, the ACLU successfully challenged a school district's decision to suspend three students for wearing armbands in protest of the Vietnam War. 393 U.S. 503 (1969). The court declared that students and teachers do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." *Id.* at 506. Over the years, the ACLU has also successfully defended the right of students to wear an anti-abortion armband, a pro-LGBTQ t-shirt, and shirts critical of political figures. Schools may not discipline students for expressing an idea or political viewpoint in class or during school activities, as long as it does not cause a substantial disruption to the school environment.

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RIGHTS OF LGBTQ STUDENTS

Cultivating a Safe Environment: Bullying of lesbian, gay, bisexual, transgender, and queer (“LGBTQ”) students has been documented as pervasive at many schools and is all too often ignored, or even encouraged, by school officials. LGBTQ students have a right to live their authentic lives and express themselves at school. Students have a right to be out of the closet at school, and conversely, public schools are not allowed to “out” students publicly. School officials and administrators must ensure they are creating a safe learning environment and protecting LGBTQ students from bullying and harassment. *See, e.g., Title IX, 20 U.S.C. § 1681* (schools may be liable if they act with deliberate indifference in failing to protect students from severe harassment on the basis of sex).



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Discipline: The intimate relationships of LGBTQ students must be treated with equal dignity as those of heterosexual students. Policies that prohibit same-sex couples or dates from attending prom, homecoming, or other dance functions violates students’ rights under Title IX of the Education Amendments of 1972, the Equal Protection Clause of the U.S. Constitution, and the Bill of Rights of the Virginia Constitution. LGBTQ students should not be punished more severely than heterosexual students for similar behavior, including for displays of affection.

LGBTQ Student Organizations: Students interested in forming a student organization, typically called a gay-straight alliance (“GSA”), are to be treated the same as students forming any other noncurricular organization or club. *See, e.g., 20 U.S.C. § 4071(a)* (if a school allows any noncurricular student group to meet, it cannot deny other groups the same access based on the content of their interest); *Gay All. of Students v. Matthews*, 544 F.2d 162 (4th Cir. 1976).

Gender Markers, Pronouns, and Student Records: Students should be addressed using their preferred names and pronouns. Refusing to do so, or refusing to update the gender markers on a student’s records when provided with appropriate documentation, may be considered a form of sex-based discrimination under federal law. *See Grimm v. Gloucester County Sch. Bd.*, Civil No. 4:15-cv-52, 2019 U.S. Dist. Lexis 138246 (E.D. Va. Aug. 9, 2019). Likewise, a student’s right to privacy includes a student’s sexual orientation or gender identity. It is against the law for school officials to disclose or compel students to disclose this information, even if the student appears open about their sexual orientation or gender identity. *See C.N. v. Wolf*, 410 F. Supp. 2d 894, 903 (C.D. Cal. 2005).



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DISCIPLINE AND ARRESTS

Generally: School discipline policies and practices should be fair and equitable and should prioritize prevention and intervention rather than harsh punishments like suspension, expulsion, and referral to law enforcement. The goal of discipline should be to teach appropriate behaviors and minimize the time students spend out of class. In Spring 2015, the Center for Public Integrity released a study finding that Virginia led the country in schools referring students to law enforcement, a phenomenon known as the “school-to-prison pipeline.” Additional studies conducted by the Virginia Department of Education found that African American students and students with disabilities were disproportionately represented in both suspensions and referrals to law enforcement throughout Virginia schools. These disparities open up school districts to potential legal challenges for race and disability discrimination under federal civil rights laws. *See, e.g.*, Complaint against Richmond Public Schools, available at <https://acluva.org/en/cases/equal-treatment-richmond-public-school-students>. In order to avoid potential legal problems, and to provide a more equitable school environment, school officials should reevaluate and revise their current discipline policies and practices to create a more positive and preventative approach to student conduct. The Virginia Board of Education has provided a blueprint for schools to use in revising their outdated practices – the Model Guidance for Positive, Preventative Code of Student Conduct Policy and Alternatives to Suspension, available at http://www.doe.virginia.gov/support/student_conduct/index.shtml.

Due Process: The U.S. Constitution requires that students receive due process before disciplinary measures are imposed. This means that school officials must follow certain procedures before they can suspend or expel students from school. Students are generally entitled to receive notice prior to any suspension or expulsion. The notice must include the facts concerning the suspension or expulsion, and the basis for any accusations. The notice must also provide students an opportunity to explain their side. *See, e.g., Goss v. Lopez*, 419 U.S. 565 (1975). For Virginia’s specific procedural requirements, see Va. Code § 22.1-276.01 *et seq.*

Corporal Punishment: Corporal or physical punishment of students is strictly prohibited by Virginia law. *See* Va. Code § 22.1-279.1.

School Resource Officers: School Resource Officers (“SROs”) can protect students from outside danger, but often punish minor behaviors through ticketing and arrests. Law enforcement intervention should typically be a last resort for minor violations best handled by schools as discipline issues. For additional resources on how to limit disproportionate school-based arrests or referrals to law enforcement, visit the Model Guidance for Positive, Preventative Code of Student Conduct Policy and Alternatives to Suspension, available at http://www.doe.virginia.gov/support/student_conduct/index.shtml.



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RIGHTS OF STUDENTS WITH DISABILITIES

Students with disabilities are provided legal protections under several federal laws. The Individuals with Disabilities Education Act (“IDEA”) requires that public schools provide eligible students with disabilities a “free, appropriate public education” in the least restrictive environment. *See* 20 U.S.C. § 1400 *et seq.* As part of the IDEA, schools must affirmatively locate, identify, and evaluate children in their district for special education and related services, a process known as “child find.” Parents may also request an evaluation at any time in writing or by speaking to a teacher or administrator, and the school district must respond to the parent’s request. Schools must educate students with disabilities in the least restrictive setting possible, with an emphasis on inclusion and integration in the regular education classroom where feasible. Additionally, students receiving special education services under the IDEA, as well as students suspected of being eligible to receive services, are entitled to certain protections and safeguards in the school discipline process. *See* 34 C.F.R. § 300.530 *et seq.*

Students with disabilities are also provided with protections under Section 504 of the Rehabilitation Act of 1974 (“Section 504”) and Title II of the Americans with Disabilities Act (“ADA”). Section 504 and the ADA prohibit discrimination against students with disabilities. This means that schools are prohibited by federal law from denying students with disabilities equal access to academic courses, field trips, extracurricular activities, school technology, and health services. School officials also have a duty to ensure that students with disabilities are not being discriminated against by being denied necessary accommodations. Restricting access to educational activities and opportunities, ignoring harassment and bullying, and failing to train staff on compliance with these laws is also prohibited under Section 504 and the ADA. *See also* Va. Code § 22.1-213 *et seq.*

RIGHTS OF IMMIGRANT STUDENTS

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RIGHTS OF PREGNANT STUDENTS

Schools are prohibited from excluding pregnant students and students with children under Title IX of the Education Amendments of 1972. This means that schools must also ensure that pregnant students or students with children have access to educational instruction, school activities, and reasonable accommodations, to the same extent that students with temporary medical conditions are given access, including the ability to make up missed classwork and learn in a safe, nonjudgmental environment. Schools are also not allowed to punish students who choose to terminate a pregnancy or to reveal a student's private medical information.



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Dr. Rita D. Bishop
Roanoke
P O Box 13145
Roanoke, VA 24031

RE: Students' Rights Reminder for the 2019-2020 Academic Year

Dear Superintendent,

As our communities prepare for the new academic year and students head back to school, it is important to be aware of the key issues affecting Virginia's students and their rights. Being aware of students' rights under state and federal law can help school officials avoid any potential legal complications and contribute to a positive learning environment that will allow each student to thrive.



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Summarized below you will find information regarding: student speech rights; the Pledge of Allegiance; censorship; religious beliefs and accommodations; the rights of students who identify as LGBTQ; discipline and arrests; the rights of students with disabilities; the rights of students who are immigrants; and the rights of students who are pregnant.

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DISCIPLINE AND ARRESTS

Generally: School discipline policies and practices should be fair and equitable and should prioritize prevention and intervention rather than harsh punishments like suspension, expulsion, and referral to law enforcement. The goal of discipline should be to teach appropriate behaviors and minimize the time students spend out of class. In Spring 2015, the Center for Public Integrity released a study finding that Virginia led the country in schools referring students to law enforcement, a phenomenon known as the “school-to-prison pipeline.” Additional studies conducted by the Virginia Department of Education found that African American students and students with disabilities were disproportionately represented in both suspensions and referrals to law enforcement throughout Virginia schools. These disparities open up school districts to potential legal challenges for race and disability discrimination under federal civil rights laws. *See, e.g.*, Complaint against Richmond Public Schools, available at <https://acluva.org/en/cases/equal-treatment-richmond-public-school-students>. In order to avoid potential legal problems, and to provide a more equitable school environment, school officials should reevaluate and revise their current discipline policies and practices to create a more positive and preventative approach to student conduct. The Virginia Board of Education has provided a blueprint for schools to use in revising their outdated practices – the Model Guidance for Positive, Preventative Code of Student Conduct Policy and Alternatives to Suspension, available at http://www.doe.virginia.gov/support/student_conduct/index.shtml.

Due Process: The U.S. Constitution requires that students receive due process before disciplinary measures are imposed. This means that school officials must follow certain procedures before they can suspend or expel students from school. Students are generally entitled to receive notice prior to any suspension or expulsion. The notice must include the facts concerning the suspension or expulsion, and the basis for any accusations. The notice must also provide students an opportunity to explain their side. *See, e.g., Goss v. Lopez*, 419 U.S. 565 (1975). For Virginia’s specific procedural requirements, see Va. Code § 22.1-276.01 *et seq.*

Corporal Punishment: Corporal or physical punishment of students is strictly prohibited by Virginia law. *See* Va. Code § 22.1-279.1.

School Resource Officers: School Resource Officers (“SROs”) can protect students from outside danger, but often punish minor behaviors through ticketing and arrests. Law enforcement intervention should typically be a last resort for minor violations best handled by schools as discipline issues. For additional resources on how to limit disproportionate school-based arrests or referrals to law enforcement, visit the Model Guidance for Positive, Preventative Code of Student Conduct Policy and Alternatives to Suspension, available at http://www.doe.virginia.gov/support/student_conduct/index.shtml.



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RIGHTS OF STUDENTS WITH DISABILITIES

Students with disabilities are provided legal protections under several federal laws. The Individuals with Disabilities Education Act (“IDEA”) requires that public schools provide eligible students with disabilities a “free, appropriate public education” in the least restrictive environment. *See* 20 U.S.C. § 1400 *et seq.* As part of the IDEA, schools must affirmatively locate, identify, and evaluate children in their district for special education and related services, a process known as “child find.” Parents may also request an evaluation at any time in writing or by speaking to a teacher or administrator, and the school district must respond to the parent’s request. Schools must educate students with disabilities in the least restrictive setting possible, with an emphasis on inclusion and integration in the regular education classroom where feasible. Additionally, students receiving special education services under the IDEA, as well as students suspected of being eligible to receive services, are entitled to certain protections and safeguards in the school discipline process. *See* 34 C.F.R. § 300.530 *et seq.*

Students with disabilities are also provided with protections under Section 504 of the Rehabilitation Act of 1974 (“Section 504”) and Title II of the Americans with Disabilities Act (“ADA”). Section 504 and the ADA prohibit discrimination against students with disabilities. This means that schools are prohibited by federal law from denying students with disabilities equal access to academic courses, field trips, extracurricular activities, school technology, and health services. School officials also have a duty to ensure that students with disabilities are not being discriminated against by being denied necessary accommodations. Restricting access to educational activities and opportunities, ignoring harassment and bullying, and failing to train staff on compliance with these laws is also prohibited under Section 504 and the ADA. *See also* Va. Code § 22.1-213 *et seq.*

RIGHTS OF IMMIGRANT STUDENTS

Schools cannot discriminate against students on the basis of race, color, or national origin. This includes discriminating against students on the basis of their immigration status. Undocumented students have a right to a free public education in your school district regardless of their immigration status, and schools cannot deny students of this right. *See, e.g., Plyler v. Doe*, 457 U.S. 202 (1982). Likewise, schools are not permitted to deny enrollment to a student based on their undocumented status; treat a student differently to determine residency; make inquiries of students or parents that may expose their undocumented status; require social security numbers from parents or students for purposes of enrollment; or engage in any other practices which may chill the right of access to school. Schools cannot turn away students with limited English proficiency; they must be provided with language instruction. *See, e.g., Lau v. Nichols*, 414 U.S. 563 (1974).

School officials should not allow immigration enforcement actions on school grounds without a judicial warrant based on probable cause that a criminal violation of the immigration laws has occurred. Schools should not call immigration authorities on students or consent to any immigration enforcement on school grounds without a criminal warrant. There is no state law requiring any state or local official to contact immigration officials nor any state or federal law prohibiting adoption of a policy that protects students and teachers from immigration action in the absence of a judicial criminal warrant.

RIGHTS OF PREGNANT STUDENTS

Schools are prohibited from excluding pregnant students and students with children under Title IX of the Education Amendments of 1972. This means that schools must also ensure that pregnant students or students with children have access to educational instruction, school activities, and reasonable accommodations, to the same extent that students with temporary medical conditions are given access, including the ability to make up missed classwork and learn in a safe, nonjudgmental environment. Schools are also not allowed to punish students who choose to terminate a pregnancy or to reveal a student's private medical information.



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Dr. Ken Nicely
Roanoke County
5937 Cove Rd NW
Roanoke, VA 24019

RE: Students' Rights Reminder for the 2019-2020 Academic Year

Dear Superintendent,

As our communities prepare for the new academic year and students head back to school, it is important to be aware of the key issues affecting Virginia's students and their rights. Being aware of students' rights under state and federal law can help school officials avoid any potential legal complications and contribute to a positive learning environment that will allow each student to thrive.



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Federal and state laws afford children enrolled in school protection from discrimination and harassment based on race, color, religion, sex, national origin, or disability. Schools are responsible for ensuring these rights are protected and for promoting a safe school atmosphere. Additionally, schools are responsible for ensuring that students' right to free speech is respected and that the freedom to practice their religion—or no religion at all— is upheld.

Summarized below you will find information regarding: student speech rights; the Pledge of Allegiance; censorship; religious beliefs and accommodations; the rights of students who identify as LGBTQ; discipline and arrests; the rights of students with disabilities; the rights of students who are immigrants; and the rights of students who are pregnant.

We hope this information will help your school district understand the rights of students in schools and guide you in taking actions that ensure student rights are protected in a safe and supportive environment. Please do not hesitate to contact the ACLU of Virginia if you have any questions about these issues or if we can be of any assistance to you in evaluating and formulating school policy on any of these matters. We can be reached at (804) 644-8022 or acluva@acluva.org.

Very truly yours,

A handwritten signature in blue ink, which appears to read "Claire G. Gastañaga".

Claire G. Gastañaga
Executive Director



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STUDENT SPEECH RIGHTS

The First Amendment ensures that students cannot be punished for exercising free speech rights, even if administrators do not approve of their message. In the landmark Supreme Court case *Tinker v. Des Moines Independent Community School District*, the ACLU successfully challenged a school district's decision to suspend three students for wearing armbands in protest of the Vietnam War. 393 U.S. 503 (1969). The court declared that students and teachers do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." *Id.* at 506. Over the years, the ACLU has also successfully defended the right of students to wear an anti-abortion armband, a pro-LGBTQ t-shirt, and shirts critical of political figures. Schools may not discipline students for expressing an idea or political viewpoint in class or during school activities, as long as it does not cause a substantial disruption to the school environment.

It is true that the constitutional rights of students in public school are not the same as those of adults exercising First Amendment rights on public streets. Students' speech rights may be limited by reasonable time, place, and manner restrictions because of the unique characteristics of the school environment. A school may limit student speech, for example, through reasonable school-wide policies against cyberbullying. Additionally, schools may prohibit vulgar or offensive speech that is inconsistent with the "fundamental values of public school education." *Bethel Sch. Dist. No. 43 v. Fraser*, 478 U.S. 675, 685-86 (1986).

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RELIGIOUS BELIEFS AND ACCOMMODATIONS

Free Exercise Clause: Under the First Amendment’s Free Exercise Clause, students have the right to worship as they see fit, with only limited restrictions. This means that while at school, students are free to practice their religion or nonreligion and to express themselves religiously without interference by school officials. Students may, for example, wear religious attire or clothing with religious messaging to school; post religious messages or images on their lockers; or bring religious materials, including religious texts or objects, to school. School officials may not, for instance, require students to remove their hijab, yarmulke, or other head covering, as it substantially burdens the practice of the student’s religion. *See, e.g., Va. Code § 22.1-203.1 et seq.; VIRGINIA STATE BOARD OF EDUCATION, GUIDELINES CONCERNING RELIGIOUS ACTIVITY IN THE PUBLIC SCHOOLS* (1995).

Establishment Clause: Under the First Amendment’s Establishment Clause, school officials cannot favor one religion over another or favor religion over nonbelief. In practice, this means that school officials and teachers cannot conduct prayer or bible-reading sessions, organize or participate in student-led prayer, or hold a prayer at graduation or sporting events, even when participation is voluntary. *See, e.g., Abington Sch. Dist. v. Schempp*, 374 U.S. 203 (1963); *Engel v. Vitale*, 370 U.S. 421 (1962); *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 308 (2000); *Lee v. Weisman*, 505 U.S. 577 (1992). Teachers cannot lead students in devotional activities or encourage student participation in religious activity before or after school, during class, or at school-sponsored activities. In fact, in the public-school context, the Supreme Court has invalidated almost every instance of school- or teacher-sponsored religious expression. Under Virginia law, school boards are permitted to establish a daily observance of one minute of silence, but the school board must be careful to ensure that its policy has secular justifications and is not merely a pretense to encourage prayer. *See, e.g., Va. Code § 22.1-203; VIRGINIA STATE BOARD OF EDUCATION, GUIDELINES CONCERNING RELIGIOUS ACTIVITY IN THE PUBLIC SCHOOLS* (1995).

RIGHTS OF LGBTQ STUDENTS

Cultivating a Safe Environment: Bullying of lesbian, gay, bisexual, transgender, and queer (“LGBTQ”) students has been documented as pervasive at many schools and is all too often ignored, or even encouraged, by school officials. LGBTQ students have a right to live their authentic lives and express themselves at school. Students have a right to be out of the closet at school, and conversely, public schools are not allowed to “out” students publicly. School officials and administrators must ensure they are creating a safe learning environment and protecting LGBTQ students from bullying and harassment. *See, e.g., Title IX, 20 U.S.C. § 1681* (schools may be liable if they act with deliberate indifference in failing to protect students from severe harassment on the basis of sex).



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Restrooms & Locker Rooms: Transgender students must be allowed to use the restroom facilities consistent with their gender identity. Schools cannot create policies that require transgender students to use restrooms or locker rooms that do not correspond with their gender identity, and schools may not create policies that require transgender students to use single-user facilities. *See Grimm v. Gloucester County Sch. Bd.*, Civil No. 4:15-cv-52, 2019 U.S. Dist. Lexis 138246 (E.D. Va. Aug. 9, 2019).

Dress Code: School officials cannot force students to wear clothing inconsistent with their gender identity. Public schools may have dress codes, but dress codes cannot treat students differently based on their gender, force students to conform to sex stereotypes, or censor particular viewpoints. Schools cannot enact dress codes based on the stereotype that only girls can wear some types of clothes and only boys wear other types of clothes. *See, e.g., U.S. v. Virginia*, 518 U.S. 515, 533 (1996) (government actors must not treat male and female students differently because of “overbroad generalizations about the different talents, capacities, or preferences of males and females.”). Schools may, for example, require that skirts be a certain length; however, they cannot require that some students wear skirts and prohibit others from doing so based on the student’s sex or gender expression. This also applies to pants, ties, or other clothing associated with traditional gender roles. And it applies to attire requirements for homecoming, prom, graduation, and other special school events.

Discipline: The intimate relationships of LGBTQ students must be treated with equal dignity as those of heterosexual students. Policies that prohibit same-sex couples or dates from attending prom, homecoming, or other dance functions violates students’ rights under Title IX of the Education Amendments of 1972, the Equal Protection Clause of the U.S. Constitution, and the Bill of Rights of the Virginia Constitution. LGBTQ students should not be punished more severely than heterosexual students for similar behavior, including for displays of affection.

LGBTQ Student Organizations: Students interested in forming a student organization, typically called a gay-straight alliance (“GSA”), are to be treated the same as students forming any other noncurricular organization or club. *See, e.g., 20 U.S.C. § 4071(a)* (if a school allows any noncurricular student group to meet, it cannot deny other groups the same access based on the content of their interest); *Gay All. of Students v. Matthews*, 544 F.2d 162 (4th Cir. 1976).

Gender Markers, Pronouns, and Student Records: Students should be addressed using their preferred names and pronouns. Refusing to do so, or refusing to update the gender markers on a student’s records when provided with appropriate documentation, may be considered a form of sex-based discrimination under federal law. *See Grimm v. Gloucester County Sch. Bd.*, Civil No. 4:15-cv-52, 2019 U.S. Dist. Lexis 138246 (E.D. Va. Aug. 9, 2019). Likewise, a student’s right to privacy includes a student’s sexual orientation or gender identity. It is against the law for school officials to disclose or compel students to disclose this information, even if the student appears open about their sexual orientation or gender identity. *See C.N. v. Wolf*, 410 F. Supp. 2d 894, 903 (C.D. Cal. 2005).



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Schools are prohibited from excluding pregnant students and students with children under Title IX of the Education Amendments of 1972. This means that schools must also ensure that pregnant students or students with children have access to educational instruction, school activities, and reasonable accommodations, to the same extent that students with temporary medical conditions are given access, including the ability to make up missed classwork and learn in a safe, nonjudgmental environment. Schools are also not allowed to punish students who choose to terminate a pregnancy or to reveal a student's private medical information.



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Dr. Phillip J. Thompson
Rockbridge County
2893 Collierstown Road
Lexington, VA 24450

RE: Students' Rights Reminder for the 2019-2020 Academic Year

Dear Superintendent,

As our communities prepare for the new academic year and students head back to school, it is important to be aware of the key issues affecting Virginia's students and their rights. Being aware of students' rights under state and federal law can help school officials avoid any potential legal complications and contribute to a positive learning environment that will allow each student to thrive.

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Discipline: The intimate relationships of LGBTQ students must be treated with equal dignity as those of heterosexual students. Policies that prohibit same-sex couples or dates from attending prom, homecoming, or other dance functions violates students’ rights under Title IX of the Education Amendments of 1972, the Equal Protection Clause of the U.S. Constitution, and the Bill of Rights of the Virginia Constitution. LGBTQ students should not be punished more severely than heterosexual students for similar behavior, including for displays of affection.

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DISCIPLINE AND ARRESTS

Generally: School discipline policies and practices should be fair and equitable and should prioritize prevention and intervention rather than harsh punishments like suspension, expulsion, and referral to law enforcement. The goal of discipline should be to teach appropriate behaviors and minimize the time students spend out of class. In Spring 2015, the Center for Public Integrity released a study finding that Virginia led the country in schools referring students to law enforcement, a phenomenon known as the “school-to-prison pipeline.” Additional studies conducted by the Virginia Department of Education found that African American students and students with disabilities were disproportionately represented in both suspensions and referrals to law enforcement throughout Virginia schools. These disparities open up school districts to potential legal challenges for race and disability discrimination under federal civil rights laws. *See, e.g.*, Complaint against Richmond Public Schools, available at <https://acluva.org/en/cases/equal-treatment-richmond-public-school-students>. In order to avoid potential legal problems, and to provide a more equitable school environment, school officials should reevaluate and revise their current discipline policies and practices to create a more positive and preventative approach to student conduct. The Virginia Board of Education has provided a blueprint for schools to use in revising their outdated practices – the Model Guidance for Positive, Preventative Code of Student Conduct Policy and Alternatives to Suspension, available at http://www.doe.virginia.gov/support/student_conduct/index.shtml.

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Corporal Punishment: Corporal or physical punishment of students is strictly prohibited by Virginia law. *See* Va. Code § 22.1-279.1.

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RIGHTS OF STUDENTS WITH DISABILITIES

Students with disabilities are provided legal protections under several federal laws. The Individuals with Disabilities Education Act (“IDEA”) requires that public schools provide eligible students with disabilities a “free, appropriate public education” in the least restrictive environment. *See* 20 U.S.C. § 1400 *et seq.* As part of the IDEA, schools must affirmatively locate, identify, and evaluate children in their district for special education and related services, a process known as “child find.” Parents may also request an evaluation at any time in writing or by speaking to a teacher or administrator, and the school district must respond to the parent’s request. Schools must educate students with disabilities in the least restrictive setting possible, with an emphasis on inclusion and integration in the regular education classroom where feasible. Additionally, students receiving special education services under the IDEA, as well as students suspected of being eligible to receive services, are entitled to certain protections and safeguards in the school discipline process. *See* 34 C.F.R. § 300.530 *et seq.*

Students with disabilities are also provided with protections under Section 504 of the Rehabilitation Act of 1974 (“Section 504”) and Title II of the Americans with Disabilities Act (“ADA”). Section 504 and the ADA prohibit discrimination against students with disabilities. This means that schools are prohibited by federal law from denying students with disabilities equal access to academic courses, field trips, extracurricular activities, school technology, and health services. School officials also have a duty to ensure that students with disabilities are not being discriminated against by being denied necessary accommodations. Restricting access to educational activities and opportunities, ignoring harassment and bullying, and failing to train staff on compliance with these laws is also prohibited under Section 504 and the ADA. *See also* Va. Code § 22.1-213 *et seq.*

RIGHTS OF IMMIGRANT STUDENTS

Schools cannot discriminate against students on the basis of race, color, or national origin. This includes discriminating against students on the basis of their immigration status. Undocumented students have a right to a free public education in your school district regardless of their immigration status, and schools cannot deny students of this right. *See, e.g., Plyler v. Doe*, 457 U.S. 202 (1982). Likewise, schools are not permitted to deny enrollment to a student based on their undocumented status; treat a student differently to determine residency; make inquiries of students or parents that may expose their undocumented status; require social security numbers from parents or students for purposes of enrollment; or engage in any other practices which may chill the right of access to school. Schools cannot turn away students with limited English proficiency; they must be provided with language instruction. *See, e.g., Lau v. Nichols*, 414 U.S. 563 (1974).

School officials should not allow immigration enforcement actions on school grounds without a judicial warrant based on probable cause that a criminal violation of the immigration laws has occurred. Schools should not call immigration authorities on students or consent to any immigration enforcement on school grounds without a criminal warrant. There is no state law requiring any state or local official to contact immigration officials nor any state or federal law prohibiting adoption of a policy that protects students and teachers from immigration action in the absence of a judicial criminal warrant.

RIGHTS OF PREGNANT STUDENTS

Schools are prohibited from excluding pregnant students and students with children under Title IX of the Education Amendments of 1972. This means that schools must also ensure that pregnant students or students with children have access to educational instruction, school activities, and reasonable accommodations, to the same extent that students with temporary medical conditions are given access, including the ability to make up missed classwork and learn in a safe, nonjudgmental environment. Schools are also not allowed to punish students who choose to terminate a pregnancy or to reveal a student's private medical information.



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Dr. Oskar Scheikl
Rockingham County
100 Mount Clinton Pike
Harrisonburg, VA 22802

RE: Students' Rights Reminder for the 2019-2020 Academic Year

Dear Superintendent,

As our communities prepare for the new academic year and students head back to school, it is important to be aware of the key issues affecting Virginia's students and their rights. Being aware of students' rights under state and federal law can help school officials avoid any potential legal complications and contribute to a positive learning environment that will allow each student to thrive.



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Federal and state laws afford children enrolled in school protection from discrimination and harassment based on race, color, religion, sex, national origin, or disability. Schools are responsible for ensuring these rights are protected and for promoting a safe school atmosphere. Additionally, schools are responsible for ensuring that students' right to free speech is respected and that the freedom to practice their religion—or no religion at all— is upheld.

Summarized below you will find information regarding: student speech rights; the Pledge of Allegiance; censorship; religious beliefs and accommodations; the rights of students who identify as LGBTQ; discipline and arrests; the rights of students with disabilities; the rights of students who are immigrants; and the rights of students who are pregnant.

We hope this information will help your school district understand the rights of students in schools and guide you in taking actions that ensure student rights are protected in a safe and supportive environment. Please do not hesitate to contact the ACLU of Virginia if you have any questions about these issues or if we can be of any assistance to you in evaluating and formulating school policy on any of these matters. We can be reached at (804) 644-8022 or acluva@acluva.org.

Very truly yours,

A handwritten signature in blue ink, which appears to read "Claire G. Gastañaga".

Claire G. Gastañaga
Executive Director



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STUDENT SPEECH RIGHTS

The First Amendment ensures that students cannot be punished for exercising free speech rights, even if administrators do not approve of their message. In the landmark Supreme Court case *Tinker v. Des Moines Independent Community School District*, the ACLU successfully challenged a school district's decision to suspend three students for wearing armbands in protest of the Vietnam War. 393 U.S. 503 (1969). The court declared that students and teachers do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." *Id.* at 506. Over the years, the ACLU has also successfully defended the right of students to wear an anti-abortion armband, a pro-LGBTQ t-shirt, and shirts critical of political figures. Schools may not discipline students for expressing an idea or political viewpoint in class or during school activities, as long as it does not cause a substantial disruption to the school environment.

It is true that the constitutional rights of students in public school are not the same as those of adults exercising First Amendment rights on public streets. Students' speech rights may be limited by reasonable time, place, and manner restrictions because of the unique characteristics of the school environment. A school may limit student speech, for example, through reasonable school-wide policies against cyberbullying. Additionally, schools may prohibit vulgar or offensive speech that is inconsistent with the "fundamental values of public school education." *Bethel Sch. Dist. No. 43 v. Fraser*, 478 U.S. 675, 685-86 (1986).

School officials should take care, however, not to define peaceful assembly as behavior that causes a substantial disruption to school activities. If students engage in a walkout, school officials may choose to discipline students for missing class but may not engage in harsher punishment because of the message or political nature of the action. School officials must not draw distinctions based on the content of a student's speech or expressive activity in imposing discipline.

PLEDGE OF ALLEGIANCE

Schools cannot punish students for refusing to salute the flag or say the Pledge of Allegiance. *W.Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624 (1943); *Sherman v. Comm. Consol. Sch. Dist. 21*, 980 F.2d 437 (7th Cir. 1992). School officials also cannot force students to stand during the Pledge of Allegiance or leave the room if a student refuses to recite the Pledge. *See* Va. Code § 22.1-202(C) ("[N]o student shall be compelled to recite the Pledge if he, his parent or legal guardian objects on religious, philosophical or other grounds to his participating in this exercise.")

CENSORSHIP

Books: Banning books, removing books and materials from a classroom or library, or otherwise making it difficult for students to read a broad array of literature limits intellectual freedom. Making books and ideas unavailable based on their content or viewpoint or taking books out of schools because they are controversial, unpopular, or offensive, may violate the First Amendment. *See, e.g., Bd. of Educ. v. Pico*, 457 U.S. 853 (1982). Courts view school libraries as the main place where students exercise their freedom "to inquire, to study and to evaluate, to gain new maturity and understanding." *Id.* at 868.

Student Publications: Schools may review and control the content of school sponsored student publications including student newspapers, yearbooks, literary magazines, on-campus videos, and radio broadcasts. But schools cannot control student publications that are not sponsored or funded by the school, not done as part of a class or school project, or that are done on a student’s own time with their own resources. *See, e.g., Burt v. Barker*, 861 F.2d 1149 (9th Cir. 1988); *Fujishima v. Bd. of Ed.*, 160 F.2d 1355 (7th Cir. 1972); *Eisner v. Stanford Bd. of Ed.*, 440 F.2d 803 (2d Cir. 1971).

RELIGIOUS BELIEFS AND ACCOMMODATIONS

Free Exercise Clause: Under the First Amendment’s Free Exercise Clause, students have the right to worship as they see fit, with only limited restrictions. This means that while at school, students are free to practice their religion or nonreligion and to express themselves religiously without interference by school officials. Students may, for example, wear religious attire or clothing with religious messaging to school; post religious messages or images on their lockers; or bring religious materials, including religious texts or objects, to school. School officials may not, for instance, require students to remove their hijab, yarmulke, or other head covering, as it substantially burdens the practice of the student’s religion. *See, e.g., Va. Code § 22.1-203.1 et seq.; VIRGINIA STATE BOARD OF EDUCATION, GUIDELINES CONCERNING RELIGIOUS ACTIVITY IN THE PUBLIC SCHOOLS* (1995).

Establishment Clause: Under the First Amendment’s Establishment Clause, school officials cannot favor one religion over another or favor religion over nonbelief. In practice, this means that school officials and teachers cannot conduct prayer or bible-reading sessions, organize or participate in student-led prayer, or hold a prayer at graduation or sporting events, even when participation is voluntary. *See, e.g., Abington Sch. Dist. v. Schempp*, 374 U.S. 203 (1963); *Engel v. Vitale*, 370 U.S. 421 (1962); *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 308 (2000); *Lee v. Weisman*, 505 U.S. 577 (1992). Teachers cannot lead students in devotional activities or encourage student participation in religious activity before or after school, during class, or at school-sponsored activities. In fact, in the public-school context, the Supreme Court has invalidated almost every instance of school- or teacher-sponsored religious expression. Under Virginia law, school boards are permitted to establish a daily observance of one minute of silence, but the school board must be careful to ensure that its policy has secular justifications and is not merely a pretense to encourage prayer. *See, e.g., Va. Code § 22.1-203; VIRGINIA STATE BOARD OF EDUCATION, GUIDELINES CONCERNING RELIGIOUS ACTIVITY IN THE PUBLIC SCHOOLS* (1995).

RIGHTS OF LGBTQ STUDENTS

Cultivating a Safe Environment: Bullying of lesbian, gay, bisexual, transgender, and queer (“LGBTQ”) students has been documented as pervasive at many schools and is all too often ignored, or even encouraged, by school officials. LGBTQ students have a right to live their authentic lives and express themselves at school. Students have a right to be out of the closet at school, and conversely, public schools are not allowed to “out” students publicly. School officials and administrators must ensure they are creating a safe learning environment and protecting LGBTQ students from bullying and harassment. *See, e.g., Title IX, 20 U.S.C. § 1681* (schools may be liable if they act with deliberate indifference in failing to protect students from severe harassment on the basis of sex).



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RIGHTS OF PREGNANT STUDENTS

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Dr. Greg Brown
Russell County
P. O. Box 8
Lebanon, VA 24266

RE: Students' Rights Reminder for the 2019-2020 Academic Year

Dear Superintendent,

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Claire G. Gastañaga
Executive Director



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Student Publications: Schools may review and control the content of school sponsored student publications including student newspapers, yearbooks, literary magazines, on-campus videos, and radio broadcasts. But schools cannot control student publications that are not sponsored or funded by the school, not done as part of a class or school project, or that are done on a student’s own time with their own resources. *See, e.g., Burt v. Barker*, 861 F.2d 1149 (9th Cir. 1988); *Fujishima v. Bd. of Ed.*, 160 F.2d 1355 (7th Cir. 1972); *Eisner v. Stanford Bd. of Ed.*, 440 F.2d 803 (2d Cir. 1971).

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Free Exercise Clause: Under the First Amendment’s Free Exercise Clause, students have the right to worship as they see fit, with only limited restrictions. This means that while at school, students are free to practice their religion or nonreligion and to express themselves religiously without interference by school officials. Students may, for example, wear religious attire or clothing with religious messaging to school; post religious messages or images on their lockers; or bring religious materials, including religious texts or objects, to school. School officials may not, for instance, require students to remove their hijab, yarmulke, or other head covering, as it substantially burdens the practice of the student’s religion. *See, e.g., Va. Code § 22.1-203.1 et seq.; VIRGINIA STATE BOARD OF EDUCATION, GUIDELINES CONCERNING RELIGIOUS ACTIVITY IN THE PUBLIC SCHOOLS* (1995).

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RIGHTS OF LGBTQ STUDENTS

Cultivating a Safe Environment: Bullying of lesbian, gay, bisexual, transgender, and queer (“LGBTQ”) students has been documented as pervasive at many schools and is all too often ignored, or even encouraged, by school officials. LGBTQ students have a right to live their authentic lives and express themselves at school. Students have a right to be out of the closet at school, and conversely, public schools are not allowed to “out” students publicly. School officials and administrators must ensure they are creating a safe learning environment and protecting LGBTQ students from bullying and harassment. *See, e.g., Title IX, 20 U.S.C. § 1681* (schools may be liable if they act with deliberate indifference in failing to protect students from severe harassment on the basis of sex).



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Gender Markers, Pronouns, and Student Records: Students should be addressed using their preferred names and pronouns. Refusing to do so, or refusing to update the gender markers on a student’s records when provided with appropriate documentation, may be considered a form of sex-based discrimination under federal law. *See Grimm v. Gloucester County Sch. Bd.*, Civil No. 4:15-cv-52, 2019 U.S. Dist. Lexis 138246 (E.D. Va. Aug. 9, 2019). Likewise, a student’s right to privacy includes a student’s sexual orientation or gender identity. It is against the law for school officials to disclose or compel students to disclose this information, even if the student appears open about their sexual orientation or gender identity. *See C.N. v. Wolf*, 410 F. Supp. 2d 894, 903 (C.D. Cal. 2005).



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Due Process: The U.S. Constitution requires that students receive due process before disciplinary measures are imposed. This means that school officials must follow certain procedures before they can suspend or expel students from school. Students are generally entitled to receive notice prior to any suspension or expulsion. The notice must include the facts concerning the suspension or expulsion, and the basis for any accusations. The notice must also provide students an opportunity to explain their side. *See, e.g., Goss v. Lopez*, 419 U.S. 565 (1975). For Virginia’s specific procedural requirements, see Va. Code § 22.1-276.01 *et seq.*

Corporal Punishment: Corporal or physical punishment of students is strictly prohibited by Virginia law. *See* Va. Code § 22.1-279.1.

School Resource Officers: School Resource Officers (“SROs”) can protect students from outside danger, but often punish minor behaviors through ticketing and arrests. Law enforcement intervention should typically be a last resort for minor violations best handled by schools as discipline issues. For additional resources on how to limit disproportionate school-based arrests or referrals to law enforcement, visit the Model Guidance for Positive, Preventative Code of Student Conduct Policy and Alternatives to Suspension, available at http://www.doe.virginia.gov/support/student_conduct/index.shtml.



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Students with disabilities are also provided with protections under Section 504 of the Rehabilitation Act of 1974 (“Section 504”) and Title II of the Americans with Disabilities Act (“ADA”). Section 504 and the ADA prohibit discrimination against students with disabilities. This means that schools are prohibited by federal law from denying students with disabilities equal access to academic courses, field trips, extracurricular activities, school technology, and health services. School officials also have a duty to ensure that students with disabilities are not being discriminated against by being denied necessary accommodations. Restricting access to educational activities and opportunities, ignoring harassment and bullying, and failing to train staff on compliance with these laws is also prohibited under Section 504 and the ADA. *See also* Va. Code § 22.1-213 *et seq.*

RIGHTS OF IMMIGRANT STUDENTS

Schools cannot discriminate against students on the basis of race, color, or national origin. This includes discriminating against students on the basis of their immigration status. Undocumented students have a right to a free public education in your school district regardless of their immigration status, and schools cannot deny students of this right. *See, e.g., Plyler v. Doe*, 457 U.S. 202 (1982). Likewise, schools are not permitted to deny enrollment to a student based on their undocumented status; treat a student differently to determine residency; make inquiries of students or parents that may expose their undocumented status; require social security numbers from parents or students for purposes of enrollment; or engage in any other practices which may chill the right of access to school. Schools cannot turn away students with limited English proficiency; they must be provided with language instruction. *See, e.g., Lau v. Nichols*, 414 U.S. 563 (1974).

School officials should not allow immigration enforcement actions on school grounds without a judicial warrant based on probable cause that a criminal violation of the immigration laws has occurred. Schools should not call immigration authorities on students or consent to any immigration enforcement on school grounds without a criminal warrant. There is no state law requiring any state or local official to contact immigration officials nor any state or federal law prohibiting adoption of a policy that protects students and teachers from immigration action in the absence of a judicial criminal warrant.

RIGHTS OF PREGNANT STUDENTS

Schools are prohibited from excluding pregnant students and students with children under Title IX of the Education Amendments of 1972. This means that schools must also ensure that pregnant students or students with children have access to educational instruction, school activities, and reasonable accommodations, to the same extent that students with temporary medical conditions are given access, including the ability to make up missed classwork and learn in a safe, nonjudgmental environment. Schools are also not allowed to punish students who choose to terminate a pregnancy or to reveal a student's private medical information.



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Dr. H. Alan Seibert
Salem
510 South College Ave
Salem, VA 24153

RE: Students' Rights Reminder for the 2019-2020 Academic Year

Dear Superintendent,

As our communities prepare for the new academic year and students head back to school, it is important to be aware of the key issues affecting Virginia's students and their rights. Being aware of students' rights under state and federal law can help school officials avoid any potential legal complications and contribute to a positive learning environment that will allow each student to thrive.



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Federal and state laws afford children enrolled in school protection from discrimination and harassment based on race, color, religion, sex, national origin, or disability. Schools are responsible for ensuring these rights are protected and for promoting a safe school atmosphere. Additionally, schools are responsible for ensuring that students' right to free speech is respected and that the freedom to practice their religion—or no religion at all— is upheld.

Summarized below you will find information regarding: student speech rights; the Pledge of Allegiance; censorship; religious beliefs and accommodations; the rights of students who identify as LGBTQ; discipline and arrests; the rights of students with disabilities; the rights of students who are immigrants; and the rights of students who are pregnant.

We hope this information will help your school district understand the rights of students in schools and guide you in taking actions that ensure student rights are protected in a safe and supportive environment. Please do not hesitate to contact the ACLU of Virginia if you have any questions about these issues or if we can be of any assistance to you in evaluating and formulating school policy on any of these matters. We can be reached at (804) 644-8022 or acluva@acluva.org.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Claire G. Gastañaga". The signature is fluid and cursive.

Claire G. Gastañaga
Executive Director



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STUDENT SPEECH RIGHTS

The First Amendment ensures that students cannot be punished for exercising free speech rights, even if administrators do not approve of their message. In the landmark Supreme Court case *Tinker v. Des Moines Independent Community School District*, the ACLU successfully challenged a school district's decision to suspend three students for wearing armbands in protest of the Vietnam War. 393 U.S. 503 (1969). The court declared that students and teachers do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." *Id.* at 506. Over the years, the ACLU has also successfully defended the right of students to wear an anti-abortion armband, a pro-LGBTQ t-shirt, and shirts critical of political figures. Schools may not discipline students for expressing an idea or political viewpoint in class or during school activities, as long as it does not cause a substantial disruption to the school environment.

It is true that the constitutional rights of students in public school are not the same as those of adults exercising First Amendment rights on public streets. Students' speech rights may be limited by reasonable time, place, and manner restrictions because of the unique characteristics of the school environment. A school may limit student speech, for example, through reasonable school-wide policies against cyberbullying. Additionally, schools may prohibit vulgar or offensive speech that is inconsistent with the "fundamental values of public school education." *Bethel Sch. Dist. No. 43 v. Fraser*, 478 U.S. 675, 685-86 (1986).

School officials should take care, however, not to define peaceful assembly as behavior that causes a substantial disruption to school activities. If students engage in a walkout, school officials may choose to discipline students for missing class but may not engage in harsher punishment because of the message or political nature of the action. School officials must not draw distinctions based on the content of a student's speech or expressive activity in imposing discipline.

PLEDGE OF ALLEGIANCE

Schools cannot punish students for refusing to salute the flag or say the Pledge of Allegiance. *W.Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624 (1943); *Sherman v. Comm. Consol. Sch. Dist. 21*, 980 F.2d 437 (7th Cir. 1992). School officials also cannot force students to stand during the Pledge of Allegiance or leave the room if a student refuses to recite the Pledge. *See* Va. Code § 22.1-202(C) ("[N]o student shall be compelled to recite the Pledge if he, his parent or legal guardian objects on religious, philosophical or other grounds to his participating in this exercise.")

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Mr. John Ferguson
Scott County
340 E Jackson St
Gate City, VA 24251

RE: Students' Rights Reminder for the 2019-2020 Academic Year

Dear Superintendent,

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Summarized below you will find information regarding: student speech rights; the Pledge of Allegiance; censorship; religious beliefs and accommodations; the rights of students who identify as LGBTQ; discipline and arrests; the rights of students with disabilities; the rights of students who are immigrants; and the rights of students who are pregnant.

We hope this information will help your school district understand the rights of students in schools and guide you in taking actions that ensure student rights are protected in a safe and supportive environment. Please do not hesitate to contact the ACLU of Virginia if you have any questions about these issues or if we can be of any assistance to you in evaluating and formulating school policy on any of these matters. We can be reached at (804) 644-8022 or acluva@acluva.org.

Very truly yours,

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Claire G. Gastañaga
Executive Director



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STUDENT SPEECH RIGHTS

The First Amendment ensures that students cannot be punished for exercising free speech rights, even if administrators do not approve of their message. In the landmark Supreme Court case *Tinker v. Des Moines Independent Community School District*, the ACLU successfully challenged a school district's decision to suspend three students for wearing armbands in protest of the Vietnam War. 393 U.S. 503 (1969). The court declared that students and teachers do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." *Id.* at 506. Over the years, the ACLU has also successfully defended the right of students to wear an anti-abortion armband, a pro-LGBTQ t-shirt, and shirts critical of political figures. Schools may not discipline students for expressing an idea or political viewpoint in class or during school activities, as long as it does not cause a substantial disruption to the school environment.

It is true that the constitutional rights of students in public school are not the same as those of adults exercising First Amendment rights on public streets. Students' speech rights may be limited by reasonable time, place, and manner restrictions because of the unique characteristics of the school environment. A school may limit student speech, for example, through reasonable school-wide policies against cyberbullying. Additionally, schools may prohibit vulgar or offensive speech that is inconsistent with the "fundamental values of public school education." *Bethel Sch. Dist. No. 43 v. Fraser*, 478 U.S. 675, 685-86 (1986).

School officials should take care, however, not to define peaceful assembly as behavior that causes a substantial disruption to school activities. If students engage in a walkout, school officials may choose to discipline students for missing class but may not engage in harsher punishment because of the message or political nature of the action. School officials must not draw distinctions based on the content of a student's speech or expressive activity in imposing discipline.

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Schools cannot punish students for refusing to salute the flag or say the Pledge of Allegiance. *W.Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624 (1943); *Sherman v. Comm. Consol. Sch. Dist. 21*, 980 F.2d 437 (7th Cir. 1992). School officials also cannot force students to stand during the Pledge of Allegiance or leave the room if a student refuses to recite the Pledge. *See* Va. Code § 22.1-202(C) ("[N]o student shall be compelled to recite the Pledge if he, his parent or legal guardian objects on religious, philosophical or other grounds to his participating in this exercise.")

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RELIGIOUS BELIEFS AND ACCOMMODATIONS

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RIGHTS OF LGBTQ STUDENTS

Cultivating a Safe Environment: Bullying of lesbian, gay, bisexual, transgender, and queer (“LGBTQ”) students has been documented as pervasive at many schools and is all too often ignored, or even encouraged, by school officials. LGBTQ students have a right to live their authentic lives and express themselves at school. Students have a right to be out of the closet at school, and conversely, public schools are not allowed to “out” students publicly. School officials and administrators must ensure they are creating a safe learning environment and protecting LGBTQ students from bullying and harassment. *See, e.g., Title IX, 20 U.S.C. § 1681* (schools may be liable if they act with deliberate indifference in failing to protect students from severe harassment on the basis of sex).



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Discipline: The intimate relationships of LGBTQ students must be treated with equal dignity as those of heterosexual students. Policies that prohibit same-sex couples or dates from attending prom, homecoming, or other dance functions violates students’ rights under Title IX of the Education Amendments of 1972, the Equal Protection Clause of the U.S. Constitution, and the Bill of Rights of the Virginia Constitution. LGBTQ students should not be punished more severely than heterosexual students for similar behavior, including for displays of affection.

LGBTQ Student Organizations: Students interested in forming a student organization, typically called a gay-straight alliance (“GSA”), are to be treated the same as students forming any other noncurricular organization or club. *See, e.g., 20 U.S.C. § 4071(a)* (if a school allows any noncurricular student group to meet, it cannot deny other groups the same access based on the content of their interest); *Gay All. of Students v. Matthews*, 544 F.2d 162 (4th Cir. 1976).

Gender Markers, Pronouns, and Student Records: Students should be addressed using their preferred names and pronouns. Refusing to do so, or refusing to update the gender markers on a student’s records when provided with appropriate documentation, may be considered a form of sex-based discrimination under federal law. *See Grimm v. Gloucester County Sch. Bd.*, Civil No. 4:15-cv-52, 2019 U.S. Dist. Lexis 138246 (E.D. Va. Aug. 9, 2019). Likewise, a student’s right to privacy includes a student’s sexual orientation or gender identity. It is against the law for school officials to disclose or compel students to disclose this information, even if the student appears open about their sexual orientation or gender identity. *See C.N. v. Wolf*, 410 F. Supp. 2d 894, 903 (C.D. Cal. 2005).



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DISCIPLINE AND ARRESTS

Generally: School discipline policies and practices should be fair and equitable and should prioritize prevention and intervention rather than harsh punishments like suspension, expulsion, and referral to law enforcement. The goal of discipline should be to teach appropriate behaviors and minimize the time students spend out of class. In Spring 2015, the Center for Public Integrity released a study finding that Virginia led the country in schools referring students to law enforcement, a phenomenon known as the “school-to-prison pipeline.” Additional studies conducted by the Virginia Department of Education found that African American students and students with disabilities were disproportionately represented in both suspensions and referrals to law enforcement throughout Virginia schools. These disparities open up school districts to potential legal challenges for race and disability discrimination under federal civil rights laws. *See, e.g.*, Complaint against Richmond Public Schools, available at <https://acluva.org/en/cases/equal-treatment-richmond-public-school-students>. In order to avoid potential legal problems, and to provide a more equitable school environment, school officials should reevaluate and revise their current discipline policies and practices to create a more positive and preventative approach to student conduct. The Virginia Board of Education has provided a blueprint for schools to use in revising their outdated practices – the Model Guidance for Positive, Preventative Code of Student Conduct Policy and Alternatives to Suspension, available at http://www.doe.virginia.gov/support/student_conduct/index.shtml.

Due Process: The U.S. Constitution requires that students receive due process before disciplinary measures are imposed. This means that school officials must follow certain procedures before they can suspend or expel students from school. Students are generally entitled to receive notice prior to any suspension or expulsion. The notice must include the facts concerning the suspension or expulsion, and the basis for any accusations. The notice must also provide students an opportunity to explain their side. *See, e.g., Goss v. Lopez*, 419 U.S. 565 (1975). For Virginia’s specific procedural requirements, see Va. Code § 22.1-276.01 *et seq.*

Corporal Punishment: Corporal or physical punishment of students is strictly prohibited by Virginia law. *See* Va. Code § 22.1-279.1.

School Resource Officers: School Resource Officers (“SROs”) can protect students from outside danger, but often punish minor behaviors through ticketing and arrests. Law enforcement intervention should typically be a last resort for minor violations best handled by schools as discipline issues. For additional resources on how to limit disproportionate school-based arrests or referrals to law enforcement, visit the Model Guidance for Positive, Preventative Code of Student Conduct Policy and Alternatives to Suspension, available at http://www.doe.virginia.gov/support/student_conduct/index.shtml.



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RIGHTS OF STUDENTS WITH DISABILITIES

Students with disabilities are provided legal protections under several federal laws. The Individuals with Disabilities Education Act (“IDEA”) requires that public schools provide eligible students with disabilities a “free, appropriate public education” in the least restrictive environment. *See* 20 U.S.C. § 1400 *et seq.* As part of the IDEA, schools must affirmatively locate, identify, and evaluate children in their district for special education and related services, a process known as “child find.” Parents may also request an evaluation at any time in writing or by speaking to a teacher or administrator, and the school district must respond to the parent’s request. Schools must educate students with disabilities in the least restrictive setting possible, with an emphasis on inclusion and integration in the regular education classroom where feasible. Additionally, students receiving special education services under the IDEA, as well as students suspected of being eligible to receive services, are entitled to certain protections and safeguards in the school discipline process. *See* 34 C.F.R. § 300.530 *et seq.*

Students with disabilities are also provided with protections under Section 504 of the Rehabilitation Act of 1974 (“Section 504”) and Title II of the Americans with Disabilities Act (“ADA”). Section 504 and the ADA prohibit discrimination against students with disabilities. This means that schools are prohibited by federal law from denying students with disabilities equal access to academic courses, field trips, extracurricular activities, school technology, and health services. School officials also have a duty to ensure that students with disabilities are not being discriminated against by being denied necessary accommodations. Restricting access to educational activities and opportunities, ignoring harassment and bullying, and failing to train staff on compliance with these laws is also prohibited under Section 504 and the ADA. *See also* Va. Code § 22.1-213 *et seq.*

RIGHTS OF IMMIGRANT STUDENTS

Schools cannot discriminate against students on the basis of race, color, or national origin. This includes discriminating against students on the basis of their immigration status. Undocumented students have a right to a free public education in your school district regardless of their immigration status, and schools cannot deny students of this right. *See, e.g., Plyler v. Doe*, 457 U.S. 202 (1982). Likewise, schools are not permitted to deny enrollment to a student based on their undocumented status; treat a student differently to determine residency; make inquiries of students or parents that may expose their undocumented status; require social security numbers from parents or students for purposes of enrollment; or engage in any other practices which may chill the right of access to school. Schools cannot turn away students with limited English proficiency; they must be provided with language instruction. *See, e.g., Lau v. Nichols*, 414 U.S. 563 (1974).

School officials should not allow immigration enforcement actions on school grounds without a judicial warrant based on probable cause that a criminal violation of the immigration laws has occurred. Schools should not call immigration authorities on students or consent to any immigration enforcement on school grounds without a criminal warrant. There is no state law requiring any state or local official to contact immigration officials nor any state or federal law prohibiting adoption of a policy that protects students and teachers from immigration action in the absence of a judicial criminal warrant.

RIGHTS OF PREGNANT STUDENTS

Schools are prohibited from excluding pregnant students and students with children under Title IX of the Education Amendments of 1972. This means that schools must also ensure that pregnant students or students with children have access to educational instruction, school activities, and reasonable accommodations, to the same extent that students with temporary medical conditions are given access, including the ability to make up missed classwork and learn in a safe, nonjudgmental environment. Schools are also not allowed to punish students who choose to terminate a pregnancy or to reveal a student's private medical information.



AMERICAN CIVIL LIBERTIES UNION
FOUNDATION

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Dr. Mark Johnston
Shenandoah County
600 N Main St Suite #200
Woodstock, VA 22664

RE: Students' Rights Reminder for the 2019-2020 Academic Year

Dear Superintendent,

As our communities prepare for the new academic year and students head back to school, it is important to be aware of the key issues affecting Virginia's students and their rights. Being aware of students' rights under state and federal law can help school officials avoid any potential legal complications and contribute to a positive learning environment that will allow each student to thrive.



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RIGHTS OF STUDENTS WITH DISABILITIES

Students with disabilities are provided legal protections under several federal laws. The Individuals with Disabilities Education Act (“IDEA”) requires that public schools provide eligible students with disabilities a “free, appropriate public education” in the least restrictive environment. *See* 20 U.S.C. § 1400 *et seq.* As part of the IDEA, schools must affirmatively locate, identify, and evaluate children in their district for special education and related services, a process known as “child find.” Parents may also request an evaluation at any time in writing or by speaking to a teacher or administrator, and the school district must respond to the parent’s request. Schools must educate students with disabilities in the least restrictive setting possible, with an emphasis on inclusion and integration in the regular education classroom where feasible. Additionally, students receiving special education services under the IDEA, as well as students suspected of being eligible to receive services, are entitled to certain protections and safeguards in the school discipline process. *See* 34 C.F.R. § 300.530 *et seq.*

Students with disabilities are also provided with protections under Section 504 of the Rehabilitation Act of 1974 (“Section 504”) and Title II of the Americans with Disabilities Act (“ADA”). Section 504 and the ADA prohibit discrimination against students with disabilities. This means that schools are prohibited by federal law from denying students with disabilities equal access to academic courses, field trips, extracurricular activities, school technology, and health services. School officials also have a duty to ensure that students with disabilities are not being discriminated against by being denied necessary accommodations. Restricting access to educational activities and opportunities, ignoring harassment and bullying, and failing to train staff on compliance with these laws is also prohibited under Section 504 and the ADA. *See also* Va. Code § 22.1-213 *et seq.*

RIGHTS OF IMMIGRANT STUDENTS

Schools cannot discriminate against students on the basis of race, color, or national origin. This includes discriminating against students on the basis of their immigration status. Undocumented students have a right to a free public education in your school district regardless of their immigration status, and schools cannot deny students of this right. *See, e.g., Plyler v. Doe*, 457 U.S. 202 (1982). Likewise, schools are not permitted to deny enrollment to a student based on their undocumented status; treat a student differently to determine residency; make inquiries of students or parents that may expose their undocumented status; require social security numbers from parents or students for purposes of enrollment; or engage in any other practices which may chill the right of access to school. Schools cannot turn away students with limited English proficiency; they must be provided with language instruction. *See, e.g., Lau v. Nichols*, 414 U.S. 563 (1974).

School officials should not allow immigration enforcement actions on school grounds without a judicial warrant based on probable cause that a criminal violation of the immigration laws has occurred. Schools should not call immigration authorities on students or consent to any immigration enforcement on school grounds without a criminal warrant. There is no state law requiring any state or local official to contact immigration officials nor any state or federal law prohibiting adoption of a policy that protects students and teachers from immigration action in the absence of a judicial criminal warrant.

RIGHTS OF PREGNANT STUDENTS

Schools are prohibited from excluding pregnant students and students with children under Title IX of the Education Amendments of 1972. This means that schools must also ensure that pregnant students or students with children have access to educational instruction, school activities, and reasonable accommodations, to the same extent that students with temporary medical conditions are given access, including the ability to make up missed classwork and learn in a safe, nonjudgmental environment. Schools are also not allowed to punish students who choose to terminate a pregnancy or to reveal a student's private medical information.



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Dr. Dennis G Carter
Smyth County
121 Bagley Cir Ste 300
Marion, VA 24354

RE: Students' Rights Reminder for the 2019-2020 Academic Year

Dear Superintendent,

As our communities prepare for the new academic year and students head back to school, it is important to be aware of the key issues affecting Virginia's students and their rights. Being aware of students' rights under state and federal law can help school officials avoid any potential legal complications and contribute to a positive learning environment that will allow each student to thrive.



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Federal and state laws afford children enrolled in school protection from discrimination and harassment based on race, color, religion, sex, national origin, or disability. Schools are responsible for ensuring these rights are protected and for promoting a safe school atmosphere. Additionally, schools are responsible for ensuring that students' right to free speech is respected and that the freedom to practice their religion—or no religion at all— is upheld.

Summarized below you will find information regarding: student speech rights; the Pledge of Allegiance; censorship; religious beliefs and accommodations; the rights of students who identify as LGBTQ; discipline and arrests; the rights of students with disabilities; the rights of students who are immigrants; and the rights of students who are pregnant.

We hope this information will help your school district understand the rights of students in schools and guide you in taking actions that ensure student rights are protected in a safe and supportive environment. Please do not hesitate to contact the ACLU of Virginia if you have any questions about these issues or if we can be of any assistance to you in evaluating and formulating school policy on any of these matters. We can be reached at (804) 644-8022 or acluva@acluva.org.

Very truly yours,

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Claire G. Gastañaga
Executive Director



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STUDENT SPEECH RIGHTS

The First Amendment ensures that students cannot be punished for exercising free speech rights, even if administrators do not approve of their message. In the landmark Supreme Court case *Tinker v. Des Moines Independent Community School District*, the ACLU successfully challenged a school district's decision to suspend three students for wearing armbands in protest of the Vietnam War. 393 U.S. 503 (1969). The court declared that students and teachers do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." *Id.* at 506. Over the years, the ACLU has also successfully defended the right of students to wear an anti-abortion armband, a pro-LGBTQ t-shirt, and shirts critical of political figures. Schools may not discipline students for expressing an idea or political viewpoint in class or during school activities, as long as it does not cause a substantial disruption to the school environment.

It is true that the constitutional rights of students in public school are not the same as those of adults exercising First Amendment rights on public streets. Students' speech rights may be limited by reasonable time, place, and manner restrictions because of the unique characteristics of the school environment. A school may limit student speech, for example, through reasonable school-wide policies against cyberbullying. Additionally, schools may prohibit vulgar or offensive speech that is inconsistent with the "fundamental values of public school education." *Bethel Sch. Dist. No. 43 v. Fraser*, 478 U.S. 675, 685-86 (1986).

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Schools cannot punish students for refusing to salute the flag or say the Pledge of Allegiance. *W.Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624 (1943); *Sherman v. Comm. Consol. Sch. Dist. 21*, 980 F.2d 437 (7th Cir. 1992). School officials also cannot force students to stand during the Pledge of Allegiance or leave the room if a student refuses to recite the Pledge. *See* Va. Code § 22.1-202(C) ("[N]o student shall be compelled to recite the Pledge if he, his parent or legal guardian objects on religious, philosophical or other grounds to his participating in this exercise.")

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RELIGIOUS BELIEFS AND ACCOMMODATIONS

Free Exercise Clause: Under the First Amendment’s Free Exercise Clause, students have the right to worship as they see fit, with only limited restrictions. This means that while at school, students are free to practice their religion or nonreligion and to express themselves religiously without interference by school officials. Students may, for example, wear religious attire or clothing with religious messaging to school; post religious messages or images on their lockers; or bring religious materials, including religious texts or objects, to school. School officials may not, for instance, require students to remove their hijab, yarmulke, or other head covering, as it substantially burdens the practice of the student’s religion. *See, e.g., Va. Code § 22.1-203.1 et seq.; VIRGINIA STATE BOARD OF EDUCATION, GUIDELINES CONCERNING RELIGIOUS ACTIVITY IN THE PUBLIC SCHOOLS* (1995).

Establishment Clause: Under the First Amendment’s Establishment Clause, school officials cannot favor one religion over another or favor religion over nonbelief. In practice, this means that school officials and teachers cannot conduct prayer or bible-reading sessions, organize or participate in student-led prayer, or hold a prayer at graduation or sporting events, even when participation is voluntary. *See, e.g., Abington Sch. Dist. v. Schempp*, 374 U.S. 203 (1963); *Engel v. Vitale*, 370 U.S. 421 (1962); *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 308 (2000); *Lee v. Weisman*, 505 U.S. 577 (1992). Teachers cannot lead students in devotional activities or encourage student participation in religious activity before or after school, during class, or at school-sponsored activities. In fact, in the public-school context, the Supreme Court has invalidated almost every instance of school- or teacher-sponsored religious expression. Under Virginia law, school boards are permitted to establish a daily observance of one minute of silence, but the school board must be careful to ensure that its policy has secular justifications and is not merely a pretense to encourage prayer. *See, e.g., Va. Code § 22.1-203; VIRGINIA STATE BOARD OF EDUCATION, GUIDELINES CONCERNING RELIGIOUS ACTIVITY IN THE PUBLIC SCHOOLS* (1995).

RIGHTS OF LGBTQ STUDENTS

Cultivating a Safe Environment: Bullying of lesbian, gay, bisexual, transgender, and queer (“LGBTQ”) students has been documented as pervasive at many schools and is all too often ignored, or even encouraged, by school officials. LGBTQ students have a right to live their authentic lives and express themselves at school. Students have a right to be out of the closet at school, and conversely, public schools are not allowed to “out” students publicly. School officials and administrators must ensure they are creating a safe learning environment and protecting LGBTQ students from bullying and harassment. *See, e.g., Title IX, 20 U.S.C. § 1681* (schools may be liable if they act with deliberate indifference in failing to protect students from severe harassment on the basis of sex).



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Discipline: The intimate relationships of LGBTQ students must be treated with equal dignity as those of heterosexual students. Policies that prohibit same-sex couples or dates from attending prom, homecoming, or other dance functions violates students’ rights under Title IX of the Education Amendments of 1972, the Equal Protection Clause of the U.S. Constitution, and the Bill of Rights of the Virginia Constitution. LGBTQ students should not be punished more severely than heterosexual students for similar behavior, including for displays of affection.

LGBTQ Student Organizations: Students interested in forming a student organization, typically called a gay-straight alliance (“GSA”), are to be treated the same as students forming any other noncurricular organization or club. *See, e.g., 20 U.S.C. § 4071(a)* (if a school allows any noncurricular student group to meet, it cannot deny other groups the same access based on the content of their interest); *Gay All. of Students v. Matthews*, 544 F.2d 162 (4th Cir. 1976).

Gender Markers, Pronouns, and Student Records: Students should be addressed using their preferred names and pronouns. Refusing to do so, or refusing to update the gender markers on a student’s records when provided with appropriate documentation, may be considered a form of sex-based discrimination under federal law. *See Grimm v. Gloucester County Sch. Bd.*, Civil No. 4:15-cv-52, 2019 U.S. Dist. Lexis 138246 (E.D. Va. Aug. 9, 2019). Likewise, a student’s right to privacy includes a student’s sexual orientation or gender identity. It is against the law for school officials to disclose or compel students to disclose this information, even if the student appears open about their sexual orientation or gender identity. *See C.N. v. Wolf*, 410 F. Supp. 2d 894, 903 (C.D. Cal. 2005).



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DISCIPLINE AND ARRESTS

Generally: School discipline policies and practices should be fair and equitable and should prioritize prevention and intervention rather than harsh punishments like suspension, expulsion, and referral to law enforcement. The goal of discipline should be to teach appropriate behaviors and minimize the time students spend out of class. In Spring 2015, the Center for Public Integrity released a study finding that Virginia led the country in schools referring students to law enforcement, a phenomenon known as the “school-to-prison pipeline.” Additional studies conducted by the Virginia Department of Education found that African American students and students with disabilities were disproportionately represented in both suspensions and referrals to law enforcement throughout Virginia schools. These disparities open up school districts to potential legal challenges for race and disability discrimination under federal civil rights laws. *See, e.g.*, Complaint against Richmond Public Schools, available at <https://acluva.org/en/cases/equal-treatment-richmond-public-school-students>. In order to avoid potential legal problems, and to provide a more equitable school environment, school officials should reevaluate and revise their current discipline policies and practices to create a more positive and preventative approach to student conduct. The Virginia Board of Education has provided a blueprint for schools to use in revising their outdated practices – the Model Guidance for Positive, Preventative Code of Student Conduct Policy and Alternatives to Suspension, available at http://www.doe.virginia.gov/support/student_conduct/index.shtml.

Due Process: The U.S. Constitution requires that students receive due process before disciplinary measures are imposed. This means that school officials must follow certain procedures before they can suspend or expel students from school. Students are generally entitled to receive notice prior to any suspension or expulsion. The notice must include the facts concerning the suspension or expulsion, and the basis for any accusations. The notice must also provide students an opportunity to explain their side. *See, e.g., Goss v. Lopez*, 419 U.S. 565 (1975). For Virginia’s specific procedural requirements, see Va. Code § 22.1-276.01 *et seq.*

Corporal Punishment: Corporal or physical punishment of students is strictly prohibited by Virginia law. *See* Va. Code § 22.1-279.1.

School Resource Officers: School Resource Officers (“SROs”) can protect students from outside danger, but often punish minor behaviors through ticketing and arrests. Law enforcement intervention should typically be a last resort for minor violations best handled by schools as discipline issues. For additional resources on how to limit disproportionate school-based arrests or referrals to law enforcement, visit the Model Guidance for Positive, Preventative Code of Student Conduct Policy and Alternatives to Suspension, available at http://www.doe.virginia.gov/support/student_conduct/index.shtml.



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RIGHTS OF PREGNANT STUDENTS

Schools are prohibited from excluding pregnant students and students with children under Title IX of the Education Amendments of 1972. This means that schools must also ensure that pregnant students or students with children have access to educational instruction, school activities, and reasonable accommodations, to the same extent that students with temporary medical conditions are given access, including the ability to make up missed classwork and learn in a safe, nonjudgmental environment. Schools are also not allowed to punish students who choose to terminate a pregnancy or to reveal a student's private medical information.



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Dr. Gwendolyn Page Shannon
Southampton County
21308 Plank Road
Courtland, VA 23837

RE: Students' Rights Reminder for the 2019-2020 Academic Year

Dear Superintendent,

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Summarized below you will find information regarding: student speech rights; the Pledge of Allegiance; censorship; religious beliefs and accommodations; the rights of students who identify as LGBTQ; discipline and arrests; the rights of students with disabilities; the rights of students who are immigrants; and the rights of students who are pregnant.

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Gender Markers, Pronouns, and Student Records: Students should be addressed using their preferred names and pronouns. Refusing to do so, or refusing to update the gender markers on a student’s records when provided with appropriate documentation, may be considered a form of sex-based discrimination under federal law. *See Grimm v. Gloucester County Sch. Bd.*, Civil No. 4:15-cv-52, 2019 U.S. Dist. Lexis 138246 (E.D. Va. Aug. 9, 2019). Likewise, a student’s right to privacy includes a student’s sexual orientation or gender identity. It is against the law for school officials to disclose or compel students to disclose this information, even if the student appears open about their sexual orientation or gender identity. *See C.N. v. Wolf*, 410 F. Supp. 2d 894, 903 (C.D. Cal. 2005).



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DISCIPLINE AND ARRESTS

Generally: School discipline policies and practices should be fair and equitable and should prioritize prevention and intervention rather than harsh punishments like suspension, expulsion, and referral to law enforcement. The goal of discipline should be to teach appropriate behaviors and minimize the time students spend out of class. In Spring 2015, the Center for Public Integrity released a study finding that Virginia led the country in schools referring students to law enforcement, a phenomenon known as the “school-to-prison pipeline.” Additional studies conducted by the Virginia Department of Education found that African American students and students with disabilities were disproportionately represented in both suspensions and referrals to law enforcement throughout Virginia schools. These disparities open up school districts to potential legal challenges for race and disability discrimination under federal civil rights laws. *See, e.g.*, Complaint against Richmond Public Schools, available at <https://acluva.org/en/cases/equal-treatment-richmond-public-school-students>. In order to avoid potential legal problems, and to provide a more equitable school environment, school officials should reevaluate and revise their current discipline policies and practices to create a more positive and preventative approach to student conduct. The Virginia Board of Education has provided a blueprint for schools to use in revising their outdated practices – the Model Guidance for Positive, Preventative Code of Student Conduct Policy and Alternatives to Suspension, available at http://www.doe.virginia.gov/support/student_conduct/index.shtml.

Due Process: The U.S. Constitution requires that students receive due process before disciplinary measures are imposed. This means that school officials must follow certain procedures before they can suspend or expel students from school. Students are generally entitled to receive notice prior to any suspension or expulsion. The notice must include the facts concerning the suspension or expulsion, and the basis for any accusations. The notice must also provide students an opportunity to explain their side. *See, e.g., Goss v. Lopez*, 419 U.S. 565 (1975). For Virginia’s specific procedural requirements, see Va. Code § 22.1-276.01 *et seq.*

Corporal Punishment: Corporal or physical punishment of students is strictly prohibited by Virginia law. *See* Va. Code § 22.1-279.1.

School Resource Officers: School Resource Officers (“SROs”) can protect students from outside danger, but often punish minor behaviors through ticketing and arrests. Law enforcement intervention should typically be a last resort for minor violations best handled by schools as discipline issues. For additional resources on how to limit disproportionate school-based arrests or referrals to law enforcement, visit the Model Guidance for Positive, Preventative Code of Student Conduct Policy and Alternatives to Suspension, available at http://www.doe.virginia.gov/support/student_conduct/index.shtml.



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Students with disabilities are provided legal protections under several federal laws. The Individuals with Disabilities Education Act (“IDEA”) requires that public schools provide eligible students with disabilities a “free, appropriate public education” in the least restrictive environment. *See* 20 U.S.C. § 1400 *et seq.* As part of the IDEA, schools must affirmatively locate, identify, and evaluate children in their district for special education and related services, a process known as “child find.” Parents may also request an evaluation at any time in writing or by speaking to a teacher or administrator, and the school district must respond to the parent’s request. Schools must educate students with disabilities in the least restrictive setting possible, with an emphasis on inclusion and integration in the regular education classroom where feasible. Additionally, students receiving special education services under the IDEA, as well as students suspected of being eligible to receive services, are entitled to certain protections and safeguards in the school discipline process. *See* 34 C.F.R. § 300.530 *et seq.*

Students with disabilities are also provided with protections under Section 504 of the Rehabilitation Act of 1974 (“Section 504”) and Title II of the Americans with Disabilities Act (“ADA”). Section 504 and the ADA prohibit discrimination against students with disabilities. This means that schools are prohibited by federal law from denying students with disabilities equal access to academic courses, field trips, extracurricular activities, school technology, and health services. School officials also have a duty to ensure that students with disabilities are not being discriminated against by being denied necessary accommodations. Restricting access to educational activities and opportunities, ignoring harassment and bullying, and failing to train staff on compliance with these laws is also prohibited under Section 504 and the ADA. *See also* Va. Code § 22.1-213 *et seq.*

RIGHTS OF IMMIGRANT STUDENTS

Schools cannot discriminate against students on the basis of race, color, or national origin. This includes discriminating against students on the basis of their immigration status. Undocumented students have a right to a free public education in your school district regardless of their immigration status, and schools cannot deny students of this right. *See, e.g., Plyler v. Doe*, 457 U.S. 202 (1982). Likewise, schools are not permitted to deny enrollment to a student based on their undocumented status; treat a student differently to determine residency; make inquiries of students or parents that may expose their undocumented status; require social security numbers from parents or students for purposes of enrollment; or engage in any other practices which may chill the right of access to school. Schools cannot turn away students with limited English proficiency; they must be provided with language instruction. *See, e.g., Lau v. Nichols*, 414 U.S. 563 (1974).

School officials should not allow immigration enforcement actions on school grounds without a judicial warrant based on probable cause that a criminal violation of the immigration laws has occurred. Schools should not call immigration authorities on students or consent to any immigration enforcement on school grounds without a criminal warrant. There is no state law requiring any state or local official to contact immigration officials nor any state or federal law prohibiting adoption of a policy that protects students and teachers from immigration action in the absence of a judicial criminal warrant.

RIGHTS OF PREGNANT STUDENTS

Schools are prohibited from excluding pregnant students and students with children under Title IX of the Education Amendments of 1972. This means that schools must also ensure that pregnant students or students with children have access to educational instruction, school activities, and reasonable accommodations, to the same extent that students with temporary medical conditions are given access, including the ability to make up missed classwork and learn in a safe, nonjudgmental environment. Schools are also not allowed to punish students who choose to terminate a pregnancy or to reveal a student's private medical information.



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Dr. Stephen Scott Baker
Spotsylvania County
8020 River Stone Drive
Fredericksburg, VA 22407

RE: Students' Rights Reminder for the 2019-2020 Academic Year

Dear Superintendent,

As our communities prepare for the new academic year and students head back to school, it is important to be aware of the key issues affecting Virginia's students and their rights. Being aware of students' rights under state and federal law can help school officials avoid any potential legal complications and contribute to a positive learning environment that will allow each student to thrive.



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Federal and state laws afford children enrolled in school protection from discrimination and harassment based on race, color, religion, sex, national origin, or disability. Schools are responsible for ensuring these rights are protected and for promoting a safe school atmosphere. Additionally, schools are responsible for ensuring that students' right to free speech is respected and that the freedom to practice their religion—or no religion at all— is upheld.

Summarized below you will find information regarding: student speech rights; the Pledge of Allegiance; censorship; religious beliefs and accommodations; the rights of students who identify as LGBTQ; discipline and arrests; the rights of students with disabilities; the rights of students who are immigrants; and the rights of students who are pregnant.

We hope this information will help your school district understand the rights of students in schools and guide you in taking actions that ensure student rights are protected in a safe and supportive environment. Please do not hesitate to contact the ACLU of Virginia if you have any questions about these issues or if we can be of any assistance to you in evaluating and formulating school policy on any of these matters. We can be reached at (804) 644-8022 or acluva@acluva.org.

Very truly yours,

A handwritten signature in blue ink, which appears to read "Claire G. Gastañaga". The signature is fluid and cursive.

Claire G. Gastañaga
Executive Director



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STUDENT SPEECH RIGHTS

The First Amendment ensures that students cannot be punished for exercising free speech rights, even if administrators do not approve of their message. In the landmark Supreme Court case *Tinker v. Des Moines Independent Community School District*, the ACLU successfully challenged a school district's decision to suspend three students for wearing armbands in protest of the Vietnam War. 393 U.S. 503 (1969). The court declared that students and teachers do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." *Id.* at 506. Over the years, the ACLU has also successfully defended the right of students to wear an anti-abortion armband, a pro-LGBTQ t-shirt, and shirts critical of political figures. Schools may not discipline students for expressing an idea or political viewpoint in class or during school activities, as long as it does not cause a substantial disruption to the school environment.

It is true that the constitutional rights of students in public school are not the same as those of adults exercising First Amendment rights on public streets. Students' speech rights may be limited by reasonable time, place, and manner restrictions because of the unique characteristics of the school environment. A school may limit student speech, for example, through reasonable school-wide policies against cyberbullying. Additionally, schools may prohibit vulgar or offensive speech that is inconsistent with the "fundamental values of public school education." *Bethel Sch. Dist. No. 43 v. Fraser*, 478 U.S. 675, 685-86 (1986).

School officials should take care, however, not to define peaceful assembly as behavior that causes a substantial disruption to school activities. If students engage in a walkout, school officials may choose to discipline students for missing class but may not engage in harsher punishment because of the message or political nature of the action. School officials must not draw distinctions based on the content of a student's speech or expressive activity in imposing discipline.

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Schools cannot punish students for refusing to salute the flag or say the Pledge of Allegiance. *W.Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624 (1943); *Sherman v. Comm. Consol. Sch. Dist. 21*, 980 F.2d 437 (7th Cir. 1992). School officials also cannot force students to stand during the Pledge of Allegiance or leave the room if a student refuses to recite the Pledge. *See* Va. Code § 22.1-202(C) ("[N]o student shall be compelled to recite the Pledge if he, his parent or legal guardian objects on religious, philosophical or other grounds to his participating in this exercise.")

CENSORSHIP

Books: Banning books, removing books and materials from a classroom or library, or otherwise making it difficult for students to read a broad array of literature limits intellectual freedom. Making books and ideas unavailable based on their content or viewpoint or taking books out of schools because they are controversial, unpopular, or offensive, may violate the First Amendment. *See, e.g., Bd. of Educ. v. Pico*, 457 U.S. 853 (1982). Courts view school libraries as the main place where students exercise their freedom "to inquire, to study and to evaluate, to gain new maturity and understanding." *Id.* at 868.

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RELIGIOUS BELIEFS AND ACCOMMODATIONS

Free Exercise Clause: Under the First Amendment’s Free Exercise Clause, students have the right to worship as they see fit, with only limited restrictions. This means that while at school, students are free to practice their religion or nonreligion and to express themselves religiously without interference by school officials. Students may, for example, wear religious attire or clothing with religious messaging to school; post religious messages or images on their lockers; or bring religious materials, including religious texts or objects, to school. School officials may not, for instance, require students to remove their hijab, yarmulke, or other head covering, as it substantially burdens the practice of the student’s religion. *See, e.g., Va. Code § 22.1-203.1 et seq.; VIRGINIA STATE BOARD OF EDUCATION, GUIDELINES CONCERNING RELIGIOUS ACTIVITY IN THE PUBLIC SCHOOLS* (1995).

Establishment Clause: Under the First Amendment’s Establishment Clause, school officials cannot favor one religion over another or favor religion over nonbelief. In practice, this means that school officials and teachers cannot conduct prayer or bible-reading sessions, organize or participate in student-led prayer, or hold a prayer at graduation or sporting events, even when participation is voluntary. *See, e.g., Abington Sch. Dist. v. Schempp*, 374 U.S. 203 (1963); *Engel v. Vitale*, 370 U.S. 421 (1962); *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 308 (2000); *Lee v. Weisman*, 505 U.S. 577 (1992). Teachers cannot lead students in devotional activities or encourage student participation in religious activity before or after school, during class, or at school-sponsored activities. In fact, in the public-school context, the Supreme Court has invalidated almost every instance of school- or teacher-sponsored religious expression. Under Virginia law, school boards are permitted to establish a daily observance of one minute of silence, but the school board must be careful to ensure that its policy has secular justifications and is not merely a pretense to encourage prayer. *See, e.g., Va. Code § 22.1-203; VIRGINIA STATE BOARD OF EDUCATION, GUIDELINES CONCERNING RELIGIOUS ACTIVITY IN THE PUBLIC SCHOOLS* (1995).

RIGHTS OF LGBTQ STUDENTS

Cultivating a Safe Environment: Bullying of lesbian, gay, bisexual, transgender, and queer (“LGBTQ”) students has been documented as pervasive at many schools and is all too often ignored, or even encouraged, by school officials. LGBTQ students have a right to live their authentic lives and express themselves at school. Students have a right to be out of the closet at school, and conversely, public schools are not allowed to “out” students publicly. School officials and administrators must ensure they are creating a safe learning environment and protecting LGBTQ students from bullying and harassment. *See, e.g., Title IX, 20 U.S.C. § 1681* (schools may be liable if they act with deliberate indifference in failing to protect students from severe harassment on the basis of sex).



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Restrooms & Locker Rooms: Transgender students must be allowed to use the restroom facilities consistent with their gender identity. Schools cannot create policies that require transgender students to use restrooms or locker rooms that do not correspond with their gender identity, and schools may not create policies that require transgender students to use single-user facilities. *See Grimm v. Gloucester County Sch. Bd.*, Civil No. 4:15-cv-52, 2019 U.S. Dist. Lexis 138246 (E.D. Va. Aug. 9, 2019).

Dress Code: School officials cannot force students to wear clothing inconsistent with their gender identity. Public schools may have dress codes, but dress codes cannot treat students differently based on their gender, force students to conform to sex stereotypes, or censor particular viewpoints. Schools cannot enact dress codes based on the stereotype that only girls can wear some types of clothes and only boys wear other types of clothes. *See, e.g., U.S. v. Virginia*, 518 U.S. 515, 533 (1996) (government actors must not treat male and female students differently because of “overbroad generalizations about the different talents, capacities, or preferences of males and females.”). Schools may, for example, require that skirts be a certain length; however, they cannot require that some students wear skirts and prohibit others from doing so based on the student’s sex or gender expression. This also applies to pants, ties, or other clothing associated with traditional gender roles. And it applies to attire requirements for homecoming, prom, graduation, and other special school events.

Discipline: The intimate relationships of LGBTQ students must be treated with equal dignity as those of heterosexual students. Policies that prohibit same-sex couples or dates from attending prom, homecoming, or other dance functions violates students’ rights under Title IX of the Education Amendments of 1972, the Equal Protection Clause of the U.S. Constitution, and the Bill of Rights of the Virginia Constitution. LGBTQ students should not be punished more severely than heterosexual students for similar behavior, including for displays of affection.

LGBTQ Student Organizations: Students interested in forming a student organization, typically called a gay-straight alliance (“GSA”), are to be treated the same as students forming any other noncurricular organization or club. *See, e.g., 20 U.S.C. § 4071(a)* (if a school allows any noncurricular student group to meet, it cannot deny other groups the same access based on the content of their interest); *Gay All. of Students v. Matthews*, 544 F.2d 162 (4th Cir. 1976).

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DISCIPLINE AND ARRESTS

Generally: School discipline policies and practices should be fair and equitable and should prioritize prevention and intervention rather than harsh punishments like suspension, expulsion, and referral to law enforcement. The goal of discipline should be to teach appropriate behaviors and minimize the time students spend out of class. In Spring 2015, the Center for Public Integrity released a study finding that Virginia led the country in schools referring students to law enforcement, a phenomenon known as the “school-to-prison pipeline.” Additional studies conducted by the Virginia Department of Education found that African American students and students with disabilities were disproportionately represented in both suspensions and referrals to law enforcement throughout Virginia schools. These disparities open up school districts to potential legal challenges for race and disability discrimination under federal civil rights laws. *See, e.g.*, Complaint against Richmond Public Schools, available at <https://acluva.org/en/cases/equal-treatment-richmond-public-school-students>. In order to avoid potential legal problems, and to provide a more equitable school environment, school officials should reevaluate and revise their current discipline policies and practices to create a more positive and preventative approach to student conduct. The Virginia Board of Education has provided a blueprint for schools to use in revising their outdated practices – the Model Guidance for Positive, Preventative Code of Student Conduct Policy and Alternatives to Suspension, available at http://www.doe.virginia.gov/support/student_conduct/index.shtml.

Due Process: The U.S. Constitution requires that students receive due process before disciplinary measures are imposed. This means that school officials must follow certain procedures before they can suspend or expel students from school. Students are generally entitled to receive notice prior to any suspension or expulsion. The notice must include the facts concerning the suspension or expulsion, and the basis for any accusations. The notice must also provide students an opportunity to explain their side. *See, e.g., Goss v. Lopez*, 419 U.S. 565 (1975). For Virginia’s specific procedural requirements, see Va. Code § 22.1-276.01 *et seq.*

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RIGHTS OF IMMIGRANT STUDENTS

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Schools are prohibited from excluding pregnant students and students with children under Title IX of the Education Amendments of 1972. This means that schools must also ensure that pregnant students or students with children have access to educational instruction, school activities, and reasonable accommodations, to the same extent that students with temporary medical conditions are given access, including the ability to make up missed classwork and learn in a safe, nonjudgmental environment. Schools are also not allowed to punish students who choose to terminate a pregnancy or to reveal a student's private medical information.



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Dr. Scott R. Kizner
Stafford County
31 Stafford Avenue
Stafford, VA 22554

RE: Students' Rights Reminder for the 2019-2020 Academic Year

Dear Superintendent,

As our communities prepare for the new academic year and students head back to school, it is important to be aware of the key issues affecting Virginia's students and their rights. Being aware of students' rights under state and federal law can help school officials avoid any potential legal complications and contribute to a positive learning environment that will allow each student to thrive.



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Claire G. Gastañaga
Executive Director



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Establishment Clause: Under the First Amendment’s Establishment Clause, school officials cannot favor one religion over another or favor religion over nonbelief. In practice, this means that school officials and teachers cannot conduct prayer or bible-reading sessions, organize or participate in student-led prayer, or hold a prayer at graduation or sporting events, even when participation is voluntary. *See, e.g., Abington Sch. Dist. v. Schempp*, 374 U.S. 203 (1963); *Engel v. Vitale*, 370 U.S. 421 (1962); *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 308 (2000); *Lee v. Weisman*, 505 U.S. 577 (1992). Teachers cannot lead students in devotional activities or encourage student participation in religious activity before or after school, during class, or at school-sponsored activities. In fact, in the public-school context, the Supreme Court has invalidated almost every instance of school- or teacher-sponsored religious expression. Under Virginia law, school boards are permitted to establish a daily observance of one minute of silence, but the school board must be careful to ensure that its policy has secular justifications and is not merely a pretense to encourage prayer. *See, e.g., Va. Code § 22.1-203*; VIRGINIA STATE BOARD OF EDUCATION, GUIDELINES CONCERNING RELIGIOUS ACTIVITY IN THE PUBLIC SCHOOLS (1995).

RIGHTS OF LGBTQ STUDENTS

Cultivating a Safe Environment: Bullying of lesbian, gay, bisexual, transgender, and queer (“LGBTQ”) students has been documented as pervasive at many schools and is all too often ignored, or even encouraged, by school officials. LGBTQ students have a right to live their authentic lives and express themselves at school. Students have a right to be out of the closet at school, and conversely, public schools are not allowed to “out” students publicly. School officials and administrators must ensure they are creating a safe learning environment and protecting LGBTQ students from bullying and harassment. *See, e.g., Title IX, 20 U.S.C. § 1681* (schools may be liable if they act with deliberate indifference in failing to protect students from severe harassment on the basis of sex).



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Discipline: The intimate relationships of LGBTQ students must be treated with equal dignity as those of heterosexual students. Policies that prohibit same-sex couples or dates from attending prom, homecoming, or other dance functions violates students’ rights under Title IX of the Education Amendments of 1972, the Equal Protection Clause of the U.S. Constitution, and the Bill of Rights of the Virginia Constitution. LGBTQ students should not be punished more severely than heterosexual students for similar behavior, including for displays of affection.

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DISCIPLINE AND ARRESTS

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Students with disabilities are also provided with protections under Section 504 of the Rehabilitation Act of 1974 (“Section 504”) and Title II of the Americans with Disabilities Act (“ADA”). Section 504 and the ADA prohibit discrimination against students with disabilities. This means that schools are prohibited by federal law from denying students with disabilities equal access to academic courses, field trips, extracurricular activities, school technology, and health services. School officials also have a duty to ensure that students with disabilities are not being discriminated against by being denied necessary accommodations. Restricting access to educational activities and opportunities, ignoring harassment and bullying, and failing to train staff on compliance with these laws is also prohibited under Section 504 and the ADA. *See also* Va. Code § 22.1-213 *et seq.*

RIGHTS OF IMMIGRANT STUDENTS

Schools cannot discriminate against students on the basis of race, color, or national origin. This includes discriminating against students on the basis of their immigration status. Undocumented students have a right to a free public education in your school district regardless of their immigration status, and schools cannot deny students of this right. *See, e.g., Plyler v. Doe*, 457 U.S. 202 (1982). Likewise, schools are not permitted to deny enrollment to a student based on their undocumented status; treat a student differently to determine residency; make inquiries of students or parents that may expose their undocumented status; require social security numbers from parents or students for purposes of enrollment; or engage in any other practices which may chill the right of access to school. Schools cannot turn away students with limited English proficiency; they must be provided with language instruction. *See, e.g., Lau v. Nichols*, 414 U.S. 563 (1974).

School officials should not allow immigration enforcement actions on school grounds without a judicial warrant based on probable cause that a criminal violation of the immigration laws has occurred. Schools should not call immigration authorities on students or consent to any immigration enforcement on school grounds without a criminal warrant. There is no state law requiring any state or local official to contact immigration officials nor any state or federal law prohibiting adoption of a policy that protects students and teachers from immigration action in the absence of a judicial criminal warrant.

RIGHTS OF PREGNANT STUDENTS

Schools are prohibited from excluding pregnant students and students with children under Title IX of the Education Amendments of 1972. This means that schools must also ensure that pregnant students or students with children have access to educational instruction, school activities, and reasonable accommodations, to the same extent that students with temporary medical conditions are given access, including the ability to make up missed classwork and learn in a safe, nonjudgmental environment. Schools are also not allowed to punish students who choose to terminate a pregnancy or to reveal a student's private medical information.



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Dr. Garrett M. Smith
Staunton
116 W. Beverley Street
Staunton, VA 24401

RE: Students' Rights Reminder for the 2019-2020 Academic Year

Dear Superintendent,

As our communities prepare for the new academic year and students head back to school, it is important to be aware of the key issues affecting Virginia's students and their rights. Being aware of students' rights under state and federal law can help school officials avoid any potential legal complications and contribute to a positive learning environment that will allow each student to thrive.



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Federal and state laws afford children enrolled in school protection from discrimination and harassment based on race, color, religion, sex, national origin, or disability. Schools are responsible for ensuring these rights are protected and for promoting a safe school atmosphere. Additionally, schools are responsible for ensuring that students' right to free speech is respected and that the freedom to practice their religion—or no religion at all— is upheld.

Summarized below you will find information regarding: student speech rights; the Pledge of Allegiance; censorship; religious beliefs and accommodations; the rights of students who identify as LGBTQ; discipline and arrests; the rights of students with disabilities; the rights of students who are immigrants; and the rights of students who are pregnant.

We hope this information will help your school district understand the rights of students in schools and guide you in taking actions that ensure student rights are protected in a safe and supportive environment. Please do not hesitate to contact the ACLU of Virginia if you have any questions about these issues or if we can be of any assistance to you in evaluating and formulating school policy on any of these matters. We can be reached at (804) 644-8022 or acluva@acluva.org.

Very truly yours,

A handwritten signature in blue ink, which appears to read "Claire G. Gastañaga".

Claire G. Gastañaga
Executive Director



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STUDENT SPEECH RIGHTS

The First Amendment ensures that students cannot be punished for exercising free speech rights, even if administrators do not approve of their message. In the landmark Supreme Court case *Tinker v. Des Moines Independent Community School District*, the ACLU successfully challenged a school district's decision to suspend three students for wearing armbands in protest of the Vietnam War. 393 U.S. 503 (1969). The court declared that students and teachers do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." *Id.* at 506. Over the years, the ACLU has also successfully defended the right of students to wear an anti-abortion armband, a pro-LGBTQ t-shirt, and shirts critical of political figures. Schools may not discipline students for expressing an idea or political viewpoint in class or during school activities, as long as it does not cause a substantial disruption to the school environment.

It is true that the constitutional rights of students in public school are not the same as those of adults exercising First Amendment rights on public streets. Students' speech rights may be limited by reasonable time, place, and manner restrictions because of the unique characteristics of the school environment. A school may limit student speech, for example, through reasonable school-wide policies against cyberbullying. Additionally, schools may prohibit vulgar or offensive speech that is inconsistent with the "fundamental values of public school education." *Bethel Sch. Dist. No. 43 v. Fraser*, 478 U.S. 675, 685-86 (1986).

School officials should take care, however, not to define peaceful assembly as behavior that causes a substantial disruption to school activities. If students engage in a walkout, school officials may choose to discipline students for missing class but may not engage in harsher punishment because of the message or political nature of the action. School officials must not draw distinctions based on the content of a student's speech or expressive activity in imposing discipline.

PLEDGE OF ALLEGIANCE

Schools cannot punish students for refusing to salute the flag or say the Pledge of Allegiance. *W.Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624 (1943); *Sherman v. Comm. Consol. Sch. Dist. 21*, 980 F.2d 437 (7th Cir. 1992). School officials also cannot force students to stand during the Pledge of Allegiance or leave the room if a student refuses to recite the Pledge. *See* Va. Code § 22.1-202(C) ("[N]o student shall be compelled to recite the Pledge if he, his parent or legal guardian objects on religious, philosophical or other grounds to his participating in this exercise.")

CENSORSHIP

Books: Banning books, removing books and materials from a classroom or library, or otherwise making it difficult for students to read a broad array of literature limits intellectual freedom. Making books and ideas unavailable based on their content or viewpoint or taking books out of schools because they are controversial, unpopular, or offensive, may violate the First Amendment. *See, e.g., Bd. of Educ. v. Pico*, 457 U.S. 853 (1982). Courts view school libraries as the main place where students exercise their freedom "to inquire, to study and to evaluate, to gain new maturity and understanding." *Id.* at 868.

Student Publications: Schools may review and control the content of school sponsored student publications including student newspapers, yearbooks, literary magazines, on-campus videos, and radio broadcasts. But schools cannot control student publications that are not sponsored or funded by the school, not done as part of a class or school project, or that are done on a student’s own time with their own resources. *See, e.g., Burt v. Barker*, 861 F.2d 1149 (9th Cir. 1988); *Fujishima v. Bd. of Ed.*, 160 F.2d 1355 (7th Cir. 1972); *Eisner v. Stanford Bd. of Ed.*, 440 F.2d 803 (2d Cir. 1971).

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Dr. Deran R. Whitney
Suffolk
PO Box 1549
Suffolk, VA 23439

RE: Students' Rights Reminder for the 2019-2020 Academic Year

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Very truly yours,

A handwritten signature in blue ink, which appears to read "Claire G. Gastañaga". The signature is fluid and cursive.

Claire G. Gastañaga
Executive Director



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STUDENT SPEECH RIGHTS

The First Amendment ensures that students cannot be punished for exercising free speech rights, even if administrators do not approve of their message. In the landmark Supreme Court case *Tinker v. Des Moines Independent Community School District*, the ACLU successfully challenged a school district's decision to suspend three students for wearing armbands in protest of the Vietnam War. 393 U.S. 503 (1969). The court declared that students and teachers do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." *Id.* at 506. Over the years, the ACLU has also successfully defended the right of students to wear an anti-abortion armband, a pro-LGBTQ t-shirt, and shirts critical of political figures. Schools may not discipline students for expressing an idea or political viewpoint in class or during school activities, as long as it does not cause a substantial disruption to the school environment.

It is true that the constitutional rights of students in public school are not the same as those of adults exercising First Amendment rights on public streets. Students' speech rights may be limited by reasonable time, place, and manner restrictions because of the unique characteristics of the school environment. A school may limit student speech, for example, through reasonable school-wide policies against cyberbullying. Additionally, schools may prohibit vulgar or offensive speech that is inconsistent with the "fundamental values of public school education." *Bethel Sch. Dist. No. 43 v. Fraser*, 478 U.S. 675, 685-86 (1986).

School officials should take care, however, not to define peaceful assembly as behavior that causes a substantial disruption to school activities. If students engage in a walkout, school officials may choose to discipline students for missing class but may not engage in harsher punishment because of the message or political nature of the action. School officials must not draw distinctions based on the content of a student's speech or expressive activity in imposing discipline.

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RIGHTS OF LGBTQ STUDENTS

Cultivating a Safe Environment: Bullying of lesbian, gay, bisexual, transgender, and queer (“LGBTQ”) students has been documented as pervasive at many schools and is all too often ignored, or even encouraged, by school officials. LGBTQ students have a right to live their authentic lives and express themselves at school. Students have a right to be out of the closet at school, and conversely, public schools are not allowed to “out” students publicly. School officials and administrators must ensure they are creating a safe learning environment and protecting LGBTQ students from bullying and harassment. *See, e.g., Title IX, 20 U.S.C. § 1681* (schools may be liable if they act with deliberate indifference in failing to protect students from severe harassment on the basis of sex).



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Gender Markers, Pronouns, and Student Records: Students should be addressed using their preferred names and pronouns. Refusing to do so, or refusing to update the gender markers on a student’s records when provided with appropriate documentation, may be considered a form of sex-based discrimination under federal law. *See Grimm v. Gloucester County Sch. Bd.*, Civil No. 4:15-cv-52, 2019 U.S. Dist. Lexis 138246 (E.D. Va. Aug. 9, 2019). Likewise, a student’s right to privacy includes a student’s sexual orientation or gender identity. It is against the law for school officials to disclose or compel students to disclose this information, even if the student appears open about their sexual orientation or gender identity. *See C.N. v. Wolf*, 410 F. Supp. 2d 894, 903 (C.D. Cal. 2005).



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DISCIPLINE AND ARRESTS

Generally: School discipline policies and practices should be fair and equitable and should prioritize prevention and intervention rather than harsh punishments like suspension, expulsion, and referral to law enforcement. The goal of discipline should be to teach appropriate behaviors and minimize the time students spend out of class. In Spring 2015, the Center for Public Integrity released a study finding that Virginia led the country in schools referring students to law enforcement, a phenomenon known as the “school-to-prison pipeline.” Additional studies conducted by the Virginia Department of Education found that African American students and students with disabilities were disproportionately represented in both suspensions and referrals to law enforcement throughout Virginia schools. These disparities open up school districts to potential legal challenges for race and disability discrimination under federal civil rights laws. *See, e.g.*, Complaint against Richmond Public Schools, available at <https://acluva.org/en/cases/equal-treatment-richmond-public-school-students>. In order to avoid potential legal problems, and to provide a more equitable school environment, school officials should reevaluate and revise their current discipline policies and practices to create a more positive and preventative approach to student conduct. The Virginia Board of Education has provided a blueprint for schools to use in revising their outdated practices – the Model Guidance for Positive, Preventative Code of Student Conduct Policy and Alternatives to Suspension, available at http://www.doe.virginia.gov/support/student_conduct/index.shtml.

Due Process: The U.S. Constitution requires that students receive due process before disciplinary measures are imposed. This means that school officials must follow certain procedures before they can suspend or expel students from school. Students are generally entitled to receive notice prior to any suspension or expulsion. The notice must include the facts concerning the suspension or expulsion, and the basis for any accusations. The notice must also provide students an opportunity to explain their side. *See, e.g., Goss v. Lopez*, 419 U.S. 565 (1975). For Virginia’s specific procedural requirements, see Va. Code § 22.1-276.01 *et seq.*

Corporal Punishment: Corporal or physical punishment of students is strictly prohibited by Virginia law. *See* Va. Code § 22.1-279.1.

School Resource Officers: School Resource Officers (“SROs”) can protect students from outside danger, but often punish minor behaviors through ticketing and arrests. Law enforcement intervention should typically be a last resort for minor violations best handled by schools as discipline issues. For additional resources on how to limit disproportionate school-based arrests or referrals to law enforcement, visit the Model Guidance for Positive, Preventative Code of Student Conduct Policy and Alternatives to Suspension, available at http://www.doe.virginia.gov/support/student_conduct/index.shtml.



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Students with disabilities are provided legal protections under several federal laws. The Individuals with Disabilities Education Act (“IDEA”) requires that public schools provide eligible students with disabilities a “free, appropriate public education” in the least restrictive environment. *See* 20 U.S.C. § 1400 *et seq.* As part of the IDEA, schools must affirmatively locate, identify, and evaluate children in their district for special education and related services, a process known as “child find.” Parents may also request an evaluation at any time in writing or by speaking to a teacher or administrator, and the school district must respond to the parent’s request. Schools must educate students with disabilities in the least restrictive setting possible, with an emphasis on inclusion and integration in the regular education classroom where feasible. Additionally, students receiving special education services under the IDEA, as well as students suspected of being eligible to receive services, are entitled to certain protections and safeguards in the school discipline process. *See* 34 C.F.R. § 300.530 *et seq.*

Students with disabilities are also provided with protections under Section 504 of the Rehabilitation Act of 1974 (“Section 504”) and Title II of the Americans with Disabilities Act (“ADA”). Section 504 and the ADA prohibit discrimination against students with disabilities. This means that schools are prohibited by federal law from denying students with disabilities equal access to academic courses, field trips, extracurricular activities, school technology, and health services. School officials also have a duty to ensure that students with disabilities are not being discriminated against by being denied necessary accommodations. Restricting access to educational activities and opportunities, ignoring harassment and bullying, and failing to train staff on compliance with these laws is also prohibited under Section 504 and the ADA. *See also* Va. Code § 22.1-213 *et seq.*

RIGHTS OF IMMIGRANT STUDENTS

Schools cannot discriminate against students on the basis of race, color, or national origin. This includes discriminating against students on the basis of their immigration status. Undocumented students have a right to a free public education in your school district regardless of their immigration status, and schools cannot deny students of this right. *See, e.g., Plyler v. Doe*, 457 U.S. 202 (1982). Likewise, schools are not permitted to deny enrollment to a student based on their undocumented status; treat a student differently to determine residency; make inquiries of students or parents that may expose their undocumented status; require social security numbers from parents or students for purposes of enrollment; or engage in any other practices which may chill the right of access to school. Schools cannot turn away students with limited English proficiency; they must be provided with language instruction. *See, e.g., Lau v. Nichols*, 414 U.S. 563 (1974).

School officials should not allow immigration enforcement actions on school grounds without a judicial warrant based on probable cause that a criminal violation of the immigration laws has occurred. Schools should not call immigration authorities on students or consent to any immigration enforcement on school grounds without a criminal warrant. There is no state law requiring any state or local official to contact immigration officials nor any state or federal law prohibiting adoption of a policy that protects students and teachers from immigration action in the absence of a judicial criminal warrant.

RIGHTS OF PREGNANT STUDENTS

Schools are prohibited from excluding pregnant students and students with children under Title IX of the Education Amendments of 1972. This means that schools must also ensure that pregnant students or students with children have access to educational instruction, school activities, and reasonable accommodations, to the same extent that students with temporary medical conditions are given access, including the ability to make up missed classwork and learn in a safe, nonjudgmental environment. Schools are also not allowed to punish students who choose to terminate a pregnancy or to reveal a student's private medical information.



AMERICAN CIVIL LIBERTIES UNION
FOUNDATION

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Dr. Michael E Thornton
Surry County
P. O. Box 317
Surry, VA 23883

RE: Students' Rights Reminder for the 2019-2020 Academic Year

Dear Superintendent,

As our communities prepare for the new academic year and students head back to school, it is important to be aware of the key issues affecting Virginia's students and their rights. Being aware of students' rights under state and federal law can help school officials avoid any potential legal complications and contribute to a positive learning environment that will allow each student to thrive.



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Federal and state laws afford children enrolled in school protection from discrimination and harassment based on race, color, religion, sex, national origin, or disability. Schools are responsible for ensuring these rights are protected and for promoting a safe school atmosphere. Additionally, schools are responsible for ensuring that students' right to free speech is respected and that the freedom to practice their religion—or no religion at all— is upheld.

Summarized below you will find information regarding: student speech rights; the Pledge of Allegiance; censorship; religious beliefs and accommodations; the rights of students who identify as LGBTQ; discipline and arrests; the rights of students with disabilities; the rights of students who are immigrants; and the rights of students who are pregnant.

We hope this information will help your school district understand the rights of students in schools and guide you in taking actions that ensure student rights are protected in a safe and supportive environment. Please do not hesitate to contact the ACLU of Virginia if you have any questions about these issues or if we can be of any assistance to you in evaluating and formulating school policy on any of these matters. We can be reached at (804) 644-8022 or acluva@acluva.org.

Very truly yours,

A handwritten signature in blue ink, which appears to read "Claire G. Gastañaga". The signature is fluid and cursive.

Claire G. Gastañaga
Executive Director



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Schools cannot discriminate against students on the basis of race, color, or national origin. This includes discriminating against students on the basis of their immigration status. Undocumented students have a right to a free public education in your school district regardless of their immigration status, and schools cannot deny students of this right. *See, e.g., Plyler v. Doe*, 457 U.S. 202 (1982). Likewise, schools are not permitted to deny enrollment to a student based on their undocumented status; treat a student differently to determine residency; make inquiries of students or parents that may expose their undocumented status; require social security numbers from parents or students for purposes of enrollment; or engage in any other practices which may chill the right of access to school. Schools cannot turn away students with limited English proficiency; they must be provided with language instruction. *See, e.g., Lau v. Nichols*, 414 U.S. 563 (1974).

School officials should not allow immigration enforcement actions on school grounds without a judicial warrant based on probable cause that a criminal violation of the immigration laws has occurred. Schools should not call immigration authorities on students or consent to any immigration enforcement on school grounds without a criminal warrant. There is no state law requiring any state or local official to contact immigration officials nor any state or federal law prohibiting adoption of a policy that protects students and teachers from immigration action in the absence of a judicial criminal warrant.

RIGHTS OF PREGNANT STUDENTS

Schools are prohibited from excluding pregnant students and students with children under Title IX of the Education Amendments of 1972. This means that schools must also ensure that pregnant students or students with children have access to educational instruction, school activities, and reasonable accommodations, to the same extent that students with temporary medical conditions are given access, including the ability to make up missed classwork and learn in a safe, nonjudgmental environment. Schools are also not allowed to punish students who choose to terminate a pregnancy or to reveal a student's private medical information.



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Dr. Arthur L. Jarrett Jr.
Sussex County
21302 Sussex Drive
Stony Creek, VA 23882

RE: Students' Rights Reminder for the 2019-2020 Academic Year

Dear Superintendent,

As our communities prepare for the new academic year and students head back to school, it is important to be aware of the key issues affecting Virginia's students and their rights. Being aware of students' rights under state and federal law can help school officials avoid any potential legal complications and contribute to a positive learning environment that will allow each student to thrive.



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Federal and state laws afford children enrolled in school protection from discrimination and harassment based on race, color, religion, sex, national origin, or disability. Schools are responsible for ensuring these rights are protected and for promoting a safe school atmosphere. Additionally, schools are responsible for ensuring that students' right to free speech is respected and that the freedom to practice their religion—or no religion at all— is upheld.

Summarized below you will find information regarding: student speech rights; the Pledge of Allegiance; censorship; religious beliefs and accommodations; the rights of students who identify as LGBTQ; discipline and arrests; the rights of students with disabilities; the rights of students who are immigrants; and the rights of students who are pregnant.

We hope this information will help your school district understand the rights of students in schools and guide you in taking actions that ensure student rights are protected in a safe and supportive environment. Please do not hesitate to contact the ACLU of Virginia if you have any questions about these issues or if we can be of any assistance to you in evaluating and formulating school policy on any of these matters. We can be reached at (804) 644-8022 or acluva@acluva.org.

Very truly yours,

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Claire G. Gastañaga
Executive Director



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STUDENT SPEECH RIGHTS

The First Amendment ensures that students cannot be punished for exercising free speech rights, even if administrators do not approve of their message. In the landmark Supreme Court case *Tinker v. Des Moines Independent Community School District*, the ACLU successfully challenged a school district's decision to suspend three students for wearing armbands in protest of the Vietnam War. 393 U.S. 503 (1969). The court declared that students and teachers do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." *Id.* at 506. Over the years, the ACLU has also successfully defended the right of students to wear an anti-abortion armband, a pro-LGBTQ t-shirt, and shirts critical of political figures. Schools may not discipline students for expressing an idea or political viewpoint in class or during school activities, as long as it does not cause a substantial disruption to the school environment.

It is true that the constitutional rights of students in public school are not the same as those of adults exercising First Amendment rights on public streets. Students' speech rights may be limited by reasonable time, place, and manner restrictions because of the unique characteristics of the school environment. A school may limit student speech, for example, through reasonable school-wide policies against cyberbullying. Additionally, schools may prohibit vulgar or offensive speech that is inconsistent with the "fundamental values of public school education." *Bethel Sch. Dist. No. 43 v. Fraser*, 478 U.S. 675, 685-86 (1986).

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RIGHTS OF LGBTQ STUDENTS

Cultivating a Safe Environment: Bullying of lesbian, gay, bisexual, transgender, and queer (“LGBTQ”) students has been documented as pervasive at many schools and is all too often ignored, or even encouraged, by school officials. LGBTQ students have a right to live their authentic lives and express themselves at school. Students have a right to be out of the closet at school, and conversely, public schools are not allowed to “out” students publicly. School officials and administrators must ensure they are creating a safe learning environment and protecting LGBTQ students from bullying and harassment. *See, e.g., Title IX, 20 U.S.C. § 1681* (schools may be liable if they act with deliberate indifference in failing to protect students from severe harassment on the basis of sex).



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Discipline: The intimate relationships of LGBTQ students must be treated with equal dignity as those of heterosexual students. Policies that prohibit same-sex couples or dates from attending prom, homecoming, or other dance functions violates students’ rights under Title IX of the Education Amendments of 1972, the Equal Protection Clause of the U.S. Constitution, and the Bill of Rights of the Virginia Constitution. LGBTQ students should not be punished more severely than heterosexual students for similar behavior, including for displays of affection.

LGBTQ Student Organizations: Students interested in forming a student organization, typically called a gay-straight alliance (“GSA”), are to be treated the same as students forming any other noncurricular organization or club. *See, e.g., 20 U.S.C. § 4071(a)* (if a school allows any noncurricular student group to meet, it cannot deny other groups the same access based on the content of their interest); *Gay All. of Students v. Matthews*, 544 F.2d 162 (4th Cir. 1976).

Gender Markers, Pronouns, and Student Records: Students should be addressed using their preferred names and pronouns. Refusing to do so, or refusing to update the gender markers on a student’s records when provided with appropriate documentation, may be considered a form of sex-based discrimination under federal law. *See Grimm v. Gloucester County Sch. Bd.*, Civil No. 4:15-cv-52, 2019 U.S. Dist. Lexis 138246 (E.D. Va. Aug. 9, 2019). Likewise, a student’s right to privacy includes a student’s sexual orientation or gender identity. It is against the law for school officials to disclose or compel students to disclose this information, even if the student appears open about their sexual orientation or gender identity. *See C.N. v. Wolf*, 410 F. Supp. 2d 894, 903 (C.D. Cal. 2005).



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DISCIPLINE AND ARRESTS

Generally: School discipline policies and practices should be fair and equitable and should prioritize prevention and intervention rather than harsh punishments like suspension, expulsion, and referral to law enforcement. The goal of discipline should be to teach appropriate behaviors and minimize the time students spend out of class. In Spring 2015, the Center for Public Integrity released a study finding that Virginia led the country in schools referring students to law enforcement, a phenomenon known as the “school-to-prison pipeline.” Additional studies conducted by the Virginia Department of Education found that African American students and students with disabilities were disproportionately represented in both suspensions and referrals to law enforcement throughout Virginia schools. These disparities open up school districts to potential legal challenges for race and disability discrimination under federal civil rights laws. *See, e.g.*, Complaint against Richmond Public Schools, available at <https://acluva.org/en/cases/equal-treatment-richmond-public-school-students>. In order to avoid potential legal problems, and to provide a more equitable school environment, school officials should reevaluate and revise their current discipline policies and practices to create a more positive and preventative approach to student conduct. The Virginia Board of Education has provided a blueprint for schools to use in revising their outdated practices – the Model Guidance for Positive, Preventative Code of Student Conduct Policy and Alternatives to Suspension, available at http://www.doe.virginia.gov/support/student_conduct/index.shtml.

Due Process: The U.S. Constitution requires that students receive due process before disciplinary measures are imposed. This means that school officials must follow certain procedures before they can suspend or expel students from school. Students are generally entitled to receive notice prior to any suspension or expulsion. The notice must include the facts concerning the suspension or expulsion, and the basis for any accusations. The notice must also provide students an opportunity to explain their side. *See, e.g., Goss v. Lopez*, 419 U.S. 565 (1975). For Virginia’s specific procedural requirements, see Va. Code § 22.1-276.01 *et seq.*

Corporal Punishment: Corporal or physical punishment of students is strictly prohibited by Virginia law. *See* Va. Code § 22.1-279.1.

School Resource Officers: School Resource Officers (“SROs”) can protect students from outside danger, but often punish minor behaviors through ticketing and arrests. Law enforcement intervention should typically be a last resort for minor violations best handled by schools as discipline issues. For additional resources on how to limit disproportionate school-based arrests or referrals to law enforcement, visit the Model Guidance for Positive, Preventative Code of Student Conduct Policy and Alternatives to Suspension, available at http://www.doe.virginia.gov/support/student_conduct/index.shtml.



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RIGHTS OF STUDENTS WITH DISABILITIES

Students with disabilities are provided legal protections under several federal laws. The Individuals with Disabilities Education Act (“IDEA”) requires that public schools provide eligible students with disabilities a “free, appropriate public education” in the least restrictive environment. *See* 20 U.S.C. § 1400 *et seq.* As part of the IDEA, schools must affirmatively locate, identify, and evaluate children in their district for special education and related services, a process known as “child find.” Parents may also request an evaluation at any time in writing or by speaking to a teacher or administrator, and the school district must respond to the parent’s request. Schools must educate students with disabilities in the least restrictive setting possible, with an emphasis on inclusion and integration in the regular education classroom where feasible. Additionally, students receiving special education services under the IDEA, as well as students suspected of being eligible to receive services, are entitled to certain protections and safeguards in the school discipline process. *See* 34 C.F.R. § 300.530 *et seq.*

Students with disabilities are also provided with protections under Section 504 of the Rehabilitation Act of 1974 (“Section 504”) and Title II of the Americans with Disabilities Act (“ADA”). Section 504 and the ADA prohibit discrimination against students with disabilities. This means that schools are prohibited by federal law from denying students with disabilities equal access to academic courses, field trips, extracurricular activities, school technology, and health services. School officials also have a duty to ensure that students with disabilities are not being discriminated against by being denied necessary accommodations. Restricting access to educational activities and opportunities, ignoring harassment and bullying, and failing to train staff on compliance with these laws is also prohibited under Section 504 and the ADA. *See also* Va. Code § 22.1-213 *et seq.*

RIGHTS OF IMMIGRANT STUDENTS

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RIGHTS OF PREGNANT STUDENTS

Schools are prohibited from excluding pregnant students and students with children under Title IX of the Education Amendments of 1972. This means that schools must also ensure that pregnant students or students with children have access to educational instruction, school activities, and reasonable accommodations, to the same extent that students with temporary medical conditions are given access, including the ability to make up missed classwork and learn in a safe, nonjudgmental environment. Schools are also not allowed to punish students who choose to terminate a pregnancy or to reveal a student's private medical information.



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Dr. Christopher Stacy
Tazewell County
506 Jeffersonville Street
Tazewell, VA 24651

RE: Students' Rights Reminder for the 2019-2020 Academic Year

Dear Superintendent,

As our communities prepare for the new academic year and students head back to school, it is important to be aware of the key issues affecting Virginia's students and their rights. Being aware of students' rights under state and federal law can help school officials avoid any potential legal complications and contribute to a positive learning environment that will allow each student to thrive.



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Summarized below you will find information regarding: student speech rights; the Pledge of Allegiance; censorship; religious beliefs and accommodations; the rights of students who identify as LGBTQ; discipline and arrests; the rights of students with disabilities; the rights of students who are immigrants; and the rights of students who are pregnant.

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DISCIPLINE AND ARRESTS

Generally: School discipline policies and practices should be fair and equitable and should prioritize prevention and intervention rather than harsh punishments like suspension, expulsion, and referral to law enforcement. The goal of discipline should be to teach appropriate behaviors and minimize the time students spend out of class. In Spring 2015, the Center for Public Integrity released a study finding that Virginia led the country in schools referring students to law enforcement, a phenomenon known as the “school-to-prison pipeline.” Additional studies conducted by the Virginia Department of Education found that African American students and students with disabilities were disproportionately represented in both suspensions and referrals to law enforcement throughout Virginia schools. These disparities open up school districts to potential legal challenges for race and disability discrimination under federal civil rights laws. *See, e.g.*, Complaint against Richmond Public Schools, available at <https://acluva.org/en/cases/equal-treatment-richmond-public-school-students>. In order to avoid potential legal problems, and to provide a more equitable school environment, school officials should reevaluate and revise their current discipline policies and practices to create a more positive and preventative approach to student conduct. The Virginia Board of Education has provided a blueprint for schools to use in revising their outdated practices – the Model Guidance for Positive, Preventative Code of Student Conduct Policy and Alternatives to Suspension, available at http://www.doe.virginia.gov/support/student_conduct/index.shtml.

Due Process: The U.S. Constitution requires that students receive due process before disciplinary measures are imposed. This means that school officials must follow certain procedures before they can suspend or expel students from school. Students are generally entitled to receive notice prior to any suspension or expulsion. The notice must include the facts concerning the suspension or expulsion, and the basis for any accusations. The notice must also provide students an opportunity to explain their side. *See, e.g., Goss v. Lopez*, 419 U.S. 565 (1975). For Virginia’s specific procedural requirements, see Va. Code § 22.1-276.01 *et seq.*

Corporal Punishment: Corporal or physical punishment of students is strictly prohibited by Virginia law. *See* Va. Code § 22.1-279.1.

School Resource Officers: School Resource Officers (“SROs”) can protect students from outside danger, but often punish minor behaviors through ticketing and arrests. Law enforcement intervention should typically be a last resort for minor violations best handled by schools as discipline issues. For additional resources on how to limit disproportionate school-based arrests or referrals to law enforcement, visit the Model Guidance for Positive, Preventative Code of Student Conduct Policy and Alternatives to Suspension, available at http://www.doe.virginia.gov/support/student_conduct/index.shtml.



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RIGHTS OF STUDENTS WITH DISABILITIES

Students with disabilities are provided legal protections under several federal laws. The Individuals with Disabilities Education Act (“IDEA”) requires that public schools provide eligible students with disabilities a “free, appropriate public education” in the least restrictive environment. *See* 20 U.S.C. § 1400 *et seq.* As part of the IDEA, schools must affirmatively locate, identify, and evaluate children in their district for special education and related services, a process known as “child find.” Parents may also request an evaluation at any time in writing or by speaking to a teacher or administrator, and the school district must respond to the parent’s request. Schools must educate students with disabilities in the least restrictive setting possible, with an emphasis on inclusion and integration in the regular education classroom where feasible. Additionally, students receiving special education services under the IDEA, as well as students suspected of being eligible to receive services, are entitled to certain protections and safeguards in the school discipline process. *See* 34 C.F.R. § 300.530 *et seq.*

Students with disabilities are also provided with protections under Section 504 of the Rehabilitation Act of 1974 (“Section 504”) and Title II of the Americans with Disabilities Act (“ADA”). Section 504 and the ADA prohibit discrimination against students with disabilities. This means that schools are prohibited by federal law from denying students with disabilities equal access to academic courses, field trips, extracurricular activities, school technology, and health services. School officials also have a duty to ensure that students with disabilities are not being discriminated against by being denied necessary accommodations. Restricting access to educational activities and opportunities, ignoring harassment and bullying, and failing to train staff on compliance with these laws is also prohibited under Section 504 and the ADA. *See also* Va. Code § 22.1-213 *et seq.*

RIGHTS OF IMMIGRANT STUDENTS

Schools cannot discriminate against students on the basis of race, color, or national origin. This includes discriminating against students on the basis of their immigration status. Undocumented students have a right to a free public education in your school district regardless of their immigration status, and schools cannot deny students of this right. *See, e.g., Plyler v. Doe*, 457 U.S. 202 (1982). Likewise, schools are not permitted to deny enrollment to a student based on their undocumented status; treat a student differently to determine residency; make inquiries of students or parents that may expose their undocumented status; require social security numbers from parents or students for purposes of enrollment; or engage in any other practices which may chill the right of access to school. Schools cannot turn away students with limited English proficiency; they must be provided with language instruction. *See, e.g., Lau v. Nichols*, 414 U.S. 563 (1974).

School officials should not allow immigration enforcement actions on school grounds without a judicial warrant based on probable cause that a criminal violation of the immigration laws has occurred. Schools should not call immigration authorities on students or consent to any immigration enforcement on school grounds without a criminal warrant. There is no state law requiring any state or local official to contact immigration officials nor any state or federal law prohibiting adoption of a policy that protects students and teachers from immigration action in the absence of a judicial criminal warrant.

RIGHTS OF PREGNANT STUDENTS

Schools are prohibited from excluding pregnant students and students with children under Title IX of the Education Amendments of 1972. This means that schools must also ensure that pregnant students or students with children have access to educational instruction, school activities, and reasonable accommodations, to the same extent that students with temporary medical conditions are given access, including the ability to make up missed classwork and learn in a safe, nonjudgmental environment. Schools are also not allowed to punish students who choose to terminate a pregnancy or to reveal a student's private medical information.



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Dr. Aaron C. Spence
Virginia Beach
PO Box 6038
Virginia Beach, VA 23456

RE: Students' Rights Reminder for the 2019-2020 Academic Year

Dear Superintendent,

As our communities prepare for the new academic year and students head back to school, it is important to be aware of the key issues affecting Virginia's students and their rights. Being aware of students' rights under state and federal law can help school officials avoid any potential legal complications and contribute to a positive learning environment that will allow each student to thrive.



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Federal and state laws afford children enrolled in school protection from discrimination and harassment based on race, color, religion, sex, national origin, or disability. Schools are responsible for ensuring these rights are protected and for promoting a safe school atmosphere. Additionally, schools are responsible for ensuring that students' right to free speech is respected and that the freedom to practice their religion—or no religion at all— is upheld.

Summarized below you will find information regarding: student speech rights; the Pledge of Allegiance; censorship; religious beliefs and accommodations; the rights of students who identify as LGBTQ; discipline and arrests; the rights of students with disabilities; the rights of students who are immigrants; and the rights of students who are pregnant.

We hope this information will help your school district understand the rights of students in schools and guide you in taking actions that ensure student rights are protected in a safe and supportive environment. Please do not hesitate to contact the ACLU of Virginia if you have any questions about these issues or if we can be of any assistance to you in evaluating and formulating school policy on any of these matters. We can be reached at (804) 644-8022 or acluva@acluva.org.

Very truly yours,

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Claire G. Gastañaga
Executive Director



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STUDENT SPEECH RIGHTS

The First Amendment ensures that students cannot be punished for exercising free speech rights, even if administrators do not approve of their message. In the landmark Supreme Court case *Tinker v. Des Moines Independent Community School District*, the ACLU successfully challenged a school district's decision to suspend three students for wearing armbands in protest of the Vietnam War. 393 U.S. 503 (1969). The court declared that students and teachers do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." *Id.* at 506. Over the years, the ACLU has also successfully defended the right of students to wear an anti-abortion armband, a pro-LGBTQ t-shirt, and shirts critical of political figures. Schools may not discipline students for expressing an idea or political viewpoint in class or during school activities, as long as it does not cause a substantial disruption to the school environment.

It is true that the constitutional rights of students in public school are not the same as those of adults exercising First Amendment rights on public streets. Students' speech rights may be limited by reasonable time, place, and manner restrictions because of the unique characteristics of the school environment. A school may limit student speech, for example, through reasonable school-wide policies against cyberbullying. Additionally, schools may prohibit vulgar or offensive speech that is inconsistent with the "fundamental values of public school education." *Bethel Sch. Dist. No. 43 v. Fraser*, 478 U.S. 675, 685-86 (1986).

School officials should take care, however, not to define peaceful assembly as behavior that causes a substantial disruption to school activities. If students engage in a walkout, school officials may choose to discipline students for missing class but may not engage in harsher punishment because of the message or political nature of the action. School officials must not draw distinctions based on the content of a student's speech or expressive activity in imposing discipline.

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CENSORSHIP

Books: Banning books, removing books and materials from a classroom or library, or otherwise making it difficult for students to read a broad array of literature limits intellectual freedom. Making books and ideas unavailable based on their content or viewpoint or taking books out of schools because they are controversial, unpopular, or offensive, may violate the First Amendment. *See, e.g., Bd. of Educ. v. Pico*, 457 U.S. 853 (1982). Courts view school libraries as the main place where students exercise their freedom "to inquire, to study and to evaluate, to gain new maturity and understanding." *Id.* at 868.

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RELIGIOUS BELIEFS AND ACCOMMODATIONS

Free Exercise Clause: Under the First Amendment’s Free Exercise Clause, students have the right to worship as they see fit, with only limited restrictions. This means that while at school, students are free to practice their religion or nonreligion and to express themselves religiously without interference by school officials. Students may, for example, wear religious attire or clothing with religious messaging to school; post religious messages or images on their lockers; or bring religious materials, including religious texts or objects, to school. School officials may not, for instance, require students to remove their hijab, yarmulke, or other head covering, as it substantially burdens the practice of the student’s religion. *See, e.g., Va. Code § 22.1-203.1 et seq.; VIRGINIA STATE BOARD OF EDUCATION, GUIDELINES CONCERNING RELIGIOUS ACTIVITY IN THE PUBLIC SCHOOLS* (1995).

Establishment Clause: Under the First Amendment’s Establishment Clause, school officials cannot favor one religion over another or favor religion over nonbelief. In practice, this means that school officials and teachers cannot conduct prayer or bible-reading sessions, organize or participate in student-led prayer, or hold a prayer at graduation or sporting events, even when participation is voluntary. *See, e.g., Abington Sch. Dist. v. Schempp*, 374 U.S. 203 (1963); *Engel v. Vitale*, 370 U.S. 421 (1962); *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 308 (2000); *Lee v. Weisman*, 505 U.S. 577 (1992). Teachers cannot lead students in devotional activities or encourage student participation in religious activity before or after school, during class, or at school-sponsored activities. In fact, in the public-school context, the Supreme Court has invalidated almost every instance of school- or teacher-sponsored religious expression. Under Virginia law, school boards are permitted to establish a daily observance of one minute of silence, but the school board must be careful to ensure that its policy has secular justifications and is not merely a pretense to encourage prayer. *See, e.g., Va. Code § 22.1-203; VIRGINIA STATE BOARD OF EDUCATION, GUIDELINES CONCERNING RELIGIOUS ACTIVITY IN THE PUBLIC SCHOOLS* (1995).

RIGHTS OF LGBTQ STUDENTS

Cultivating a Safe Environment: Bullying of lesbian, gay, bisexual, transgender, and queer (“LGBTQ”) students has been documented as pervasive at many schools and is all too often ignored, or even encouraged, by school officials. LGBTQ students have a right to live their authentic lives and express themselves at school. Students have a right to be out of the closet at school, and conversely, public schools are not allowed to “out” students publicly. School officials and administrators must ensure they are creating a safe learning environment and protecting LGBTQ students from bullying and harassment. *See, e.g., Title IX, 20 U.S.C. § 1681* (schools may be liable if they act with deliberate indifference in failing to protect students from severe harassment on the basis of sex).



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Restrooms & Locker Rooms: Transgender students must be allowed to use the restroom facilities consistent with their gender identity. Schools cannot create policies that require transgender students to use restrooms or locker rooms that do not correspond with their gender identity, and schools may not create policies that require transgender students to use single-user facilities. *See Grimm v. Gloucester County Sch. Bd.*, Civil No. 4:15-cv-52, 2019 U.S. Dist. Lexis 138246 (E.D. Va. Aug. 9, 2019).

Dress Code: School officials cannot force students to wear clothing inconsistent with their gender identity. Public schools may have dress codes, but dress codes cannot treat students differently based on their gender, force students to conform to sex stereotypes, or censor particular viewpoints. Schools cannot enact dress codes based on the stereotype that only girls can wear some types of clothes and only boys wear other types of clothes. *See, e.g., U.S. v. Virginia*, 518 U.S. 515, 533 (1996) (government actors must not treat male and female students differently because of “overbroad generalizations about the different talents, capacities, or preferences of males and females.”). Schools may, for example, require that skirts be a certain length; however, they cannot require that some students wear skirts and prohibit others from doing so based on the student’s sex or gender expression. This also applies to pants, ties, or other clothing associated with traditional gender roles. And it applies to attire requirements for homecoming, prom, graduation, and other special school events.

Discipline: The intimate relationships of LGBTQ students must be treated with equal dignity as those of heterosexual students. Policies that prohibit same-sex couples or dates from attending prom, homecoming, or other dance functions violates students’ rights under Title IX of the Education Amendments of 1972, the Equal Protection Clause of the U.S. Constitution, and the Bill of Rights of the Virginia Constitution. LGBTQ students should not be punished more severely than heterosexual students for similar behavior, including for displays of affection.

LGBTQ Student Organizations: Students interested in forming a student organization, typically called a gay-straight alliance (“GSA”), are to be treated the same as students forming any other noncurricular organization or club. *See, e.g., 20 U.S.C. § 4071(a)* (if a school allows any noncurricular student group to meet, it cannot deny other groups the same access based on the content of their interest); *Gay All. of Students v. Matthews*, 544 F.2d 162 (4th Cir. 1976).

Gender Markers, Pronouns, and Student Records: Students should be addressed using their preferred names and pronouns. Refusing to do so, or refusing to update the gender markers on a student’s records when provided with appropriate documentation, may be considered a form of sex-based discrimination under federal law. *See Grimm v. Gloucester County Sch. Bd.*, Civil No. 4:15-cv-52, 2019 U.S. Dist. Lexis 138246 (E.D. Va. Aug. 9, 2019). Likewise, a student’s right to privacy includes a student’s sexual orientation or gender identity. It is against the law for school officials to disclose or compel students to disclose this information, even if the student appears open about their sexual orientation or gender identity. *See C.N. v. Wolf*, 410 F. Supp. 2d 894, 903 (C.D. Cal. 2005).



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RIGHTS OF PREGNANT STUDENTS

Schools are prohibited from excluding pregnant students and students with children under Title IX of the Education Amendments of 1972. This means that schools must also ensure that pregnant students or students with children have access to educational instruction, school activities, and reasonable accommodations, to the same extent that students with temporary medical conditions are given access, including the ability to make up missed classwork and learn in a safe, nonjudgmental environment. Schools are also not allowed to punish students who choose to terminate a pregnancy or to reveal a student's private medical information.



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Mr. L. Gregory Drescher
Warren County
210 North Commerce Avenue
Front Royal, VA 22630

RE: Students' Rights Reminder for the 2019-2020 Academic Year

Dear Superintendent,

As our communities prepare for the new academic year and students head back to school, it is important to be aware of the key issues affecting Virginia's students and their rights. Being aware of students' rights under state and federal law can help school officials avoid any potential legal complications and contribute to a positive learning environment that will allow each student to thrive.



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Restrooms & Locker Rooms: Transgender students must be allowed to use the restroom facilities consistent with their gender identity. Schools cannot create policies that require transgender students to use restrooms or locker rooms that do not correspond with their gender identity, and schools may not create policies that require transgender students to use single-user facilities. *See Grimm v. Gloucester County Sch. Bd.*, Civil No. 4:15-cv-52, 2019 U.S. Dist. Lexis 138246 (E.D. Va. Aug. 9, 2019).

Dress Code: School officials cannot force students to wear clothing inconsistent with their gender identity. Public schools may have dress codes, but dress codes cannot treat students differently based on their gender, force students to conform to sex stereotypes, or censor particular viewpoints. Schools cannot enact dress codes based on the stereotype that only girls can wear some types of clothes and only boys wear other types of clothes. *See, e.g., U.S. v. Virginia*, 518 U.S. 515, 533 (1996) (government actors must not treat male and female students differently because of “overbroad generalizations about the different talents, capacities, or preferences of males and females.”). Schools may, for example, require that skirts be a certain length; however, they cannot require that some students wear skirts and prohibit others from doing so based on the student’s sex or gender expression. This also applies to pants, ties, or other clothing associated with traditional gender roles. And it applies to attire requirements for homecoming, prom, graduation, and other special school events.

Discipline: The intimate relationships of LGBTQ students must be treated with equal dignity as those of heterosexual students. Policies that prohibit same-sex couples or dates from attending prom, homecoming, or other dance functions violates students’ rights under Title IX of the Education Amendments of 1972, the Equal Protection Clause of the U.S. Constitution, and the Bill of Rights of the Virginia Constitution. LGBTQ students should not be punished more severely than heterosexual students for similar behavior, including for displays of affection.

LGBTQ Student Organizations: Students interested in forming a student organization, typically called a gay-straight alliance (“GSA”), are to be treated the same as students forming any other noncurricular organization or club. *See, e.g., 20 U.S.C. § 4071(a)* (if a school allows any noncurricular student group to meet, it cannot deny other groups the same access based on the content of their interest); *Gay All. of Students v. Matthews*, 544 F.2d 162 (4th Cir. 1976).

Gender Markers, Pronouns, and Student Records: Students should be addressed using their preferred names and pronouns. Refusing to do so, or refusing to update the gender markers on a student’s records when provided with appropriate documentation, may be considered a form of sex-based discrimination under federal law. *See Grimm v. Gloucester County Sch. Bd.*, Civil No. 4:15-cv-52, 2019 U.S. Dist. Lexis 138246 (E.D. Va. Aug. 9, 2019). Likewise, a student’s right to privacy includes a student’s sexual orientation or gender identity. It is against the law for school officials to disclose or compel students to disclose this information, even if the student appears open about their sexual orientation or gender identity. *See C.N. v. Wolf*, 410 F. Supp. 2d 894, 903 (C.D. Cal. 2005).



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DISCIPLINE AND ARRESTS

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Due Process: The U.S. Constitution requires that students receive due process before disciplinary measures are imposed. This means that school officials must follow certain procedures before they can suspend or expel students from school. Students are generally entitled to receive notice prior to any suspension or expulsion. The notice must include the facts concerning the suspension or expulsion, and the basis for any accusations. The notice must also provide students an opportunity to explain their side. *See, e.g., Goss v. Lopez*, 419 U.S. 565 (1975). For Virginia’s specific procedural requirements, see Va. Code § 22.1-276.01 *et seq.*

Corporal Punishment: Corporal or physical punishment of students is strictly prohibited by Virginia law. *See* Va. Code § 22.1-279.1.

School Resource Officers: School Resource Officers (“SROs”) can protect students from outside danger, but often punish minor behaviors through ticketing and arrests. Law enforcement intervention should typically be a last resort for minor violations best handled by schools as discipline issues. For additional resources on how to limit disproportionate school-based arrests or referrals to law enforcement, visit the Model Guidance for Positive, Preventative Code of Student Conduct Policy and Alternatives to Suspension, available at http://www.doe.virginia.gov/support/student_conduct/index.shtml.



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RIGHTS OF STUDENTS WITH DISABILITIES

Students with disabilities are provided legal protections under several federal laws. The Individuals with Disabilities Education Act (“IDEA”) requires that public schools provide eligible students with disabilities a “free, appropriate public education” in the least restrictive environment. *See* 20 U.S.C. § 1400 *et seq.* As part of the IDEA, schools must affirmatively locate, identify, and evaluate children in their district for special education and related services, a process known as “child find.” Parents may also request an evaluation at any time in writing or by speaking to a teacher or administrator, and the school district must respond to the parent’s request. Schools must educate students with disabilities in the least restrictive setting possible, with an emphasis on inclusion and integration in the regular education classroom where feasible. Additionally, students receiving special education services under the IDEA, as well as students suspected of being eligible to receive services, are entitled to certain protections and safeguards in the school discipline process. *See* 34 C.F.R. § 300.530 *et seq.*

Students with disabilities are also provided with protections under Section 504 of the Rehabilitation Act of 1974 (“Section 504”) and Title II of the Americans with Disabilities Act (“ADA”). Section 504 and the ADA prohibit discrimination against students with disabilities. This means that schools are prohibited by federal law from denying students with disabilities equal access to academic courses, field trips, extracurricular activities, school technology, and health services. School officials also have a duty to ensure that students with disabilities are not being discriminated against by being denied necessary accommodations. Restricting access to educational activities and opportunities, ignoring harassment and bullying, and failing to train staff on compliance with these laws is also prohibited under Section 504 and the ADA. *See also* Va. Code § 22.1-213 *et seq.*

RIGHTS OF IMMIGRANT STUDENTS

Schools cannot discriminate against students on the basis of race, color, or national origin. This includes discriminating against students on the basis of their immigration status. Undocumented students have a right to a free public education in your school district regardless of their immigration status, and schools cannot deny students of this right. *See, e.g., Plyler v. Doe*, 457 U.S. 202 (1982). Likewise, schools are not permitted to deny enrollment to a student based on their undocumented status; treat a student differently to determine residency; make inquiries of students or parents that may expose their undocumented status; require social security numbers from parents or students for purposes of enrollment; or engage in any other practices which may chill the right of access to school. Schools cannot turn away students with limited English proficiency; they must be provided with language instruction. *See, e.g., Lau v. Nichols*, 414 U.S. 563 (1974).

School officials should not allow immigration enforcement actions on school grounds without a judicial warrant based on probable cause that a criminal violation of the immigration laws has occurred. Schools should not call immigration authorities on students or consent to any immigration enforcement on school grounds without a criminal warrant. There is no state law requiring any state or local official to contact immigration officials nor any state or federal law prohibiting adoption of a policy that protects students and teachers from immigration action in the absence of a judicial criminal warrant.

RIGHTS OF PREGNANT STUDENTS

Schools are prohibited from excluding pregnant students and students with children under Title IX of the Education Amendments of 1972. This means that schools must also ensure that pregnant students or students with children have access to educational instruction, school activities, and reasonable accommodations, to the same extent that students with temporary medical conditions are given access, including the ability to make up missed classwork and learn in a safe, nonjudgmental environment. Schools are also not allowed to punish students who choose to terminate a pregnancy or to reveal a student's private medical information.



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Dr. Brian C. Ratliff
Washington County
812 Thompson Dr
Abingdon, VA 24210

RE: Students' Rights Reminder for the 2019-2020 Academic Year

Dear Superintendent,

As our communities prepare for the new academic year and students head back to school, it is important to be aware of the key issues affecting Virginia's students and their rights. Being aware of students' rights under state and federal law can help school officials avoid any potential legal complications and contribute to a positive learning environment that will allow each student to thrive.



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Federal and state laws afford children enrolled in school protection from discrimination and harassment based on race, color, religion, sex, national origin, or disability. Schools are responsible for ensuring these rights are protected and for promoting a safe school atmosphere. Additionally, schools are responsible for ensuring that students' right to free speech is respected and that the freedom to practice their religion—or no religion at all— is upheld.

Summarized below you will find information regarding: student speech rights; the Pledge of Allegiance; censorship; religious beliefs and accommodations; the rights of students who identify as LGBTQ; discipline and arrests; the rights of students with disabilities; the rights of students who are immigrants; and the rights of students who are pregnant.

We hope this information will help your school district understand the rights of students in schools and guide you in taking actions that ensure student rights are protected in a safe and supportive environment. Please do not hesitate to contact the ACLU of Virginia if you have any questions about these issues or if we can be of any assistance to you in evaluating and formulating school policy on any of these matters. We can be reached at (804) 644-8022 or acluva@acluva.org.

Very truly yours,

A handwritten signature in blue ink, which appears to read "Claire G. Gastañaga". The signature is fluid and cursive.

Claire G. Gastañaga
Executive Director



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STUDENT SPEECH RIGHTS

The First Amendment ensures that students cannot be punished for exercising free speech rights, even if administrators do not approve of their message. In the landmark Supreme Court case *Tinker v. Des Moines Independent Community School District*, the ACLU successfully challenged a school district's decision to suspend three students for wearing armbands in protest of the Vietnam War. 393 U.S. 503 (1969). The court declared that students and teachers do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." *Id.* at 506. Over the years, the ACLU has also successfully defended the right of students to wear an anti-abortion armband, a pro-LGBTQ t-shirt, and shirts critical of political figures. Schools may not discipline students for expressing an idea or political viewpoint in class or during school activities, as long as it does not cause a substantial disruption to the school environment.

It is true that the constitutional rights of students in public school are not the same as those of adults exercising First Amendment rights on public streets. Students' speech rights may be limited by reasonable time, place, and manner restrictions because of the unique characteristics of the school environment. A school may limit student speech, for example, through reasonable school-wide policies against cyberbullying. Additionally, schools may prohibit vulgar or offensive speech that is inconsistent with the "fundamental values of public school education." *Bethel Sch. Dist. No. 43 v. Fraser*, 478 U.S. 675, 685-86 (1986).

School officials should take care, however, not to define peaceful assembly as behavior that causes a substantial disruption to school activities. If students engage in a walkout, school officials may choose to discipline students for missing class but may not engage in harsher punishment because of the message or political nature of the action. School officials must not draw distinctions based on the content of a student's speech or expressive activity in imposing discipline.

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Schools cannot punish students for refusing to salute the flag or say the Pledge of Allegiance. *W.Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624 (1943); *Sherman v. Comm. Consol. Sch. Dist. 21*, 980 F.2d 437 (7th Cir. 1992). School officials also cannot force students to stand during the Pledge of Allegiance or leave the room if a student refuses to recite the Pledge. *See* Va. Code § 22.1-202(C) ("[N]o student shall be compelled to recite the Pledge if he, his parent or legal guardian objects on religious, philosophical or other grounds to his participating in this exercise.")

CENSORSHIP

Books: Banning books, removing books and materials from a classroom or library, or otherwise making it difficult for students to read a broad array of literature limits intellectual freedom. Making books and ideas unavailable based on their content or viewpoint or taking books out of schools because they are controversial, unpopular, or offensive, may violate the First Amendment. *See, e.g., Bd. of Educ. v. Pico*, 457 U.S. 853 (1982). Courts view school libraries as the main place where students exercise their freedom "to inquire, to study and to evaluate, to gain new maturity and understanding." *Id.* at 868.

Student Publications: Schools may review and control the content of school sponsored student publications including student newspapers, yearbooks, literary magazines, on-campus videos, and radio broadcasts. But schools cannot control student publications that are not sponsored or funded by the school, not done as part of a class or school project, or that are done on a student’s own time with their own resources. *See, e.g., Burt v. Barker*, 861 F.2d 1149 (9th Cir. 1988); *Fujishima v. Bd. of Ed.*, 160 F.2d 1355 (7th Cir. 1972); *Eisner v. Stanford Bd. of Ed.*, 440 F.2d 803 (2d Cir. 1971).

RELIGIOUS BELIEFS AND ACCOMMODATIONS

Free Exercise Clause: Under the First Amendment’s Free Exercise Clause, students have the right to worship as they see fit, with only limited restrictions. This means that while at school, students are free to practice their religion or nonreligion and to express themselves religiously without interference by school officials. Students may, for example, wear religious attire or clothing with religious messaging to school; post religious messages or images on their lockers; or bring religious materials, including religious texts or objects, to school. School officials may not, for instance, require students to remove their hijab, yarmulke, or other head covering, as it substantially burdens the practice of the student’s religion. *See, e.g., Va. Code § 22.1-203.1 et seq.; VIRGINIA STATE BOARD OF EDUCATION, GUIDELINES CONCERNING RELIGIOUS ACTIVITY IN THE PUBLIC SCHOOLS* (1995).

Establishment Clause: Under the First Amendment’s Establishment Clause, school officials cannot favor one religion over another or favor religion over nonbelief. In practice, this means that school officials and teachers cannot conduct prayer or bible-reading sessions, organize or participate in student-led prayer, or hold a prayer at graduation or sporting events, even when participation is voluntary. *See, e.g., Abington Sch. Dist. v. Schempp*, 374 U.S. 203 (1963); *Engel v. Vitale*, 370 U.S. 421 (1962); *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 308 (2000); *Lee v. Weisman*, 505 U.S. 577 (1992). Teachers cannot lead students in devotional activities or encourage student participation in religious activity before or after school, during class, or at school-sponsored activities. In fact, in the public-school context, the Supreme Court has invalidated almost every instance of school- or teacher-sponsored religious expression. Under Virginia law, school boards are permitted to establish a daily observance of one minute of silence, but the school board must be careful to ensure that its policy has secular justifications and is not merely a pretense to encourage prayer. *See, e.g., Va. Code § 22.1-203; VIRGINIA STATE BOARD OF EDUCATION, GUIDELINES CONCERNING RELIGIOUS ACTIVITY IN THE PUBLIC SCHOOLS* (1995).

RIGHTS OF LGBTQ STUDENTS

Cultivating a Safe Environment: Bullying of lesbian, gay, bisexual, transgender, and queer (“LGBTQ”) students has been documented as pervasive at many schools and is all too often ignored, or even encouraged, by school officials. LGBTQ students have a right to live their authentic lives and express themselves at school. Students have a right to be out of the closet at school, and conversely, public schools are not allowed to “out” students publicly. School officials and administrators must ensure they are creating a safe learning environment and protecting LGBTQ students from bullying and harassment. *See, e.g., Title IX, 20 U.S.C. § 1681* (schools may be liable if they act with deliberate indifference in failing to protect students from severe harassment on the basis of sex).



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Dr. Jeffrey D. Cassell
Waynesboro
301 Pine Ave
Waynesboro, VA 22980

RE: Students' Rights Reminder for the 2019-2020 Academic Year

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Due Process: The U.S. Constitution requires that students receive due process before disciplinary measures are imposed. This means that school officials must follow certain procedures before they can suspend or expel students from school. Students are generally entitled to receive notice prior to any suspension or expulsion. The notice must include the facts concerning the suspension or expulsion, and the basis for any accusations. The notice must also provide students an opportunity to explain their side. *See, e.g., Goss v. Lopez*, 419 U.S. 565 (1975). For Virginia’s specific procedural requirements, see Va. Code § 22.1-276.01 *et seq.*

Corporal Punishment: Corporal or physical punishment of students is strictly prohibited by Virginia law. *See* Va. Code § 22.1-279.1.

School Resource Officers: School Resource Officers (“SROs”) can protect students from outside danger, but often punish minor behaviors through ticketing and arrests. Law enforcement intervention should typically be a last resort for minor violations best handled by schools as discipline issues. For additional resources on how to limit disproportionate school-based arrests or referrals to law enforcement, visit the Model Guidance for Positive, Preventative Code of Student Conduct Policy and Alternatives to Suspension, available at http://www.doe.virginia.gov/support/student_conduct/index.shtml.



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Students with disabilities are also provided with protections under Section 504 of the Rehabilitation Act of 1974 (“Section 504”) and Title II of the Americans with Disabilities Act (“ADA”). Section 504 and the ADA prohibit discrimination against students with disabilities. This means that schools are prohibited by federal law from denying students with disabilities equal access to academic courses, field trips, extracurricular activities, school technology, and health services. School officials also have a duty to ensure that students with disabilities are not being discriminated against by being denied necessary accommodations. Restricting access to educational activities and opportunities, ignoring harassment and bullying, and failing to train staff on compliance with these laws is also prohibited under Section 504 and the ADA. *See also* Va. Code § 22.1-213 *et seq.*

RIGHTS OF IMMIGRANT STUDENTS

Schools cannot discriminate against students on the basis of race, color, or national origin. This includes discriminating against students on the basis of their immigration status. Undocumented students have a right to a free public education in your school district regardless of their immigration status, and schools cannot deny students of this right. *See, e.g., Plyler v. Doe*, 457 U.S. 202 (1982). Likewise, schools are not permitted to deny enrollment to a student based on their undocumented status; treat a student differently to determine residency; make inquiries of students or parents that may expose their undocumented status; require social security numbers from parents or students for purposes of enrollment; or engage in any other practices which may chill the right of access to school. Schools cannot turn away students with limited English proficiency; they must be provided with language instruction. *See, e.g., Lau v. Nichols*, 414 U.S. 563 (1974).

School officials should not allow immigration enforcement actions on school grounds without a judicial warrant based on probable cause that a criminal violation of the immigration laws has occurred. Schools should not call immigration authorities on students or consent to any immigration enforcement on school grounds without a criminal warrant. There is no state law requiring any state or local official to contact immigration officials nor any state or federal law prohibiting adoption of a policy that protects students and teachers from immigration action in the absence of a judicial criminal warrant.

RIGHTS OF PREGNANT STUDENTS

Schools are prohibited from excluding pregnant students and students with children under Title IX of the Education Amendments of 1972. This means that schools must also ensure that pregnant students or students with children have access to educational instruction, school activities, and reasonable accommodations, to the same extent that students with temporary medical conditions are given access, including the ability to make up missed classwork and learn in a safe, nonjudgmental environment. Schools are also not allowed to punish students who choose to terminate a pregnancy or to reveal a student's private medical information.



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Mrs. Laura K. Abel
West Point
PO Box T
West Point, VA 23181

RE: Students' Rights Reminder for the 2019-2020 Academic Year

Dear Superintendent,

As our communities prepare for the new academic year and students head back to school, it is important to be aware of the key issues affecting Virginia's students and their rights. Being aware of students' rights under state and federal law can help school officials avoid any potential legal complications and contribute to a positive learning environment that will allow each student to thrive.



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Federal and state laws afford children enrolled in school protection from discrimination and harassment based on race, color, religion, sex, national origin, or disability. Schools are responsible for ensuring these rights are protected and for promoting a safe school atmosphere. Additionally, schools are responsible for ensuring that students' right to free speech is respected and that the freedom to practice their religion—or no religion at all— is upheld.

Summarized below you will find information regarding: student speech rights; the Pledge of Allegiance; censorship; religious beliefs and accommodations; the rights of students who identify as LGBTQ; discipline and arrests; the rights of students with disabilities; the rights of students who are immigrants; and the rights of students who are pregnant.

We hope this information will help your school district understand the rights of students in schools and guide you in taking actions that ensure student rights are protected in a safe and supportive environment. Please do not hesitate to contact the ACLU of Virginia if you have any questions about these issues or if we can be of any assistance to you in evaluating and formulating school policy on any of these matters. We can be reached at (804) 644-8022 or acluva@acluva.org.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Claire G. Gastañaga". The signature is fluid and cursive.

Claire G. Gastañaga
Executive Director



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STUDENT SPEECH RIGHTS

The First Amendment ensures that students cannot be punished for exercising free speech rights, even if administrators do not approve of their message. In the landmark Supreme Court case *Tinker v. Des Moines Independent Community School District*, the ACLU successfully challenged a school district's decision to suspend three students for wearing armbands in protest of the Vietnam War. 393 U.S. 503 (1969). The court declared that students and teachers do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." *Id.* at 506. Over the years, the ACLU has also successfully defended the right of students to wear an anti-abortion armband, a pro-LGBTQ t-shirt, and shirts critical of political figures. Schools may not discipline students for expressing an idea or political viewpoint in class or during school activities, as long as it does not cause a substantial disruption to the school environment.

It is true that the constitutional rights of students in public school are not the same as those of adults exercising First Amendment rights on public streets. Students' speech rights may be limited by reasonable time, place, and manner restrictions because of the unique characteristics of the school environment. A school may limit student speech, for example, through reasonable school-wide policies against cyberbullying. Additionally, schools may prohibit vulgar or offensive speech that is inconsistent with the "fundamental values of public school education." *Bethel Sch. Dist. No. 43 v. Fraser*, 478 U.S. 675, 685-86 (1986).

School officials should take care, however, not to define peaceful assembly as behavior that causes a substantial disruption to school activities. If students engage in a walkout, school officials may choose to discipline students for missing class but may not engage in harsher punishment because of the message or political nature of the action. School officials must not draw distinctions based on the content of a student's speech or expressive activity in imposing discipline.

PLEDGE OF ALLEGIANCE

Schools cannot punish students for refusing to salute the flag or say the Pledge of Allegiance. *W.Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624 (1943); *Sherman v. Comm. Consol. Sch. Dist. 21*, 980 F.2d 437 (7th Cir. 1992). School officials also cannot force students to stand during the Pledge of Allegiance or leave the room if a student refuses to recite the Pledge. *See* Va. Code § 22.1-202(C) ("[N]o student shall be compelled to recite the Pledge if he, his parent or legal guardian objects on religious, philosophical or other grounds to his participating in this exercise.")

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Dr. Michael D. Perry
Westmoreland County
141 Opal Lane
Montross, VA 22520

RE: Students' Rights Reminder for the 2019-2020 Academic Year

Dear Superintendent,

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Summarized below you will find information regarding: student speech rights; the Pledge of Allegiance; censorship; religious beliefs and accommodations; the rights of students who identify as LGBTQ; discipline and arrests; the rights of students with disabilities; the rights of students who are immigrants; and the rights of students who are pregnant.

We hope this information will help your school district understand the rights of students in schools and guide you in taking actions that ensure student rights are protected in a safe and supportive environment. Please do not hesitate to contact the ACLU of Virginia if you have any questions about these issues or if we can be of any assistance to you in evaluating and formulating school policy on any of these matters. We can be reached at (804) 644-8022 or acluva@acluva.org.

Very truly yours,

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Claire G. Gastañaga
Executive Director



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STUDENT SPEECH RIGHTS

The First Amendment ensures that students cannot be punished for exercising free speech rights, even if administrators do not approve of their message. In the landmark Supreme Court case *Tinker v. Des Moines Independent Community School District*, the ACLU successfully challenged a school district's decision to suspend three students for wearing armbands in protest of the Vietnam War. 393 U.S. 503 (1969). The court declared that students and teachers do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." *Id.* at 506. Over the years, the ACLU has also successfully defended the right of students to wear an anti-abortion armband, a pro-LGBTQ t-shirt, and shirts critical of political figures. Schools may not discipline students for expressing an idea or political viewpoint in class or during school activities, as long as it does not cause a substantial disruption to the school environment.

It is true that the constitutional rights of students in public school are not the same as those of adults exercising First Amendment rights on public streets. Students' speech rights may be limited by reasonable time, place, and manner restrictions because of the unique characteristics of the school environment. A school may limit student speech, for example, through reasonable school-wide policies against cyberbullying. Additionally, schools may prohibit vulgar or offensive speech that is inconsistent with the "fundamental values of public school education." *Bethel Sch. Dist. No. 43 v. Fraser*, 478 U.S. 675, 685-86 (1986).

School officials should take care, however, not to define peaceful assembly as behavior that causes a substantial disruption to school activities. If students engage in a walkout, school officials may choose to discipline students for missing class but may not engage in harsher punishment because of the message or political nature of the action. School officials must not draw distinctions based on the content of a student's speech or expressive activity in imposing discipline.

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Schools cannot punish students for refusing to salute the flag or say the Pledge of Allegiance. *W.Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624 (1943); *Sherman v. Comm. Consol. Sch. Dist. 21*, 980 F.2d 437 (7th Cir. 1992). School officials also cannot force students to stand during the Pledge of Allegiance or leave the room if a student refuses to recite the Pledge. *See* Va. Code § 22.1-202(C) ("[N]o student shall be compelled to recite the Pledge if he, his parent or legal guardian objects on religious, philosophical or other grounds to his participating in this exercise.")

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RELIGIOUS BELIEFS AND ACCOMMODATIONS

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RIGHTS OF LGBTQ STUDENTS

Cultivating a Safe Environment: Bullying of lesbian, gay, bisexual, transgender, and queer (“LGBTQ”) students has been documented as pervasive at many schools and is all too often ignored, or even encouraged, by school officials. LGBTQ students have a right to live their authentic lives and express themselves at school. Students have a right to be out of the closet at school, and conversely, public schools are not allowed to “out” students publicly. School officials and administrators must ensure they are creating a safe learning environment and protecting LGBTQ students from bullying and harassment. *See, e.g., Title IX, 20 U.S.C. § 1681* (schools may be liable if they act with deliberate indifference in failing to protect students from severe harassment on the basis of sex).



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LGBTQ Student Organizations: Students interested in forming a student organization, typically called a gay-straight alliance (“GSA”), are to be treated the same as students forming any other noncurricular organization or club. *See, e.g., 20 U.S.C. § 4071(a)* (if a school allows any noncurricular student group to meet, it cannot deny other groups the same access based on the content of their interest); *Gay All. of Students v. Matthews*, 544 F.2d 162 (4th Cir. 1976).

Gender Markers, Pronouns, and Student Records: Students should be addressed using their preferred names and pronouns. Refusing to do so, or refusing to update the gender markers on a student’s records when provided with appropriate documentation, may be considered a form of sex-based discrimination under federal law. *See Grimm v. Gloucester County Sch. Bd.*, Civil No. 4:15-cv-52, 2019 U.S. Dist. Lexis 138246 (E.D. Va. Aug. 9, 2019). Likewise, a student’s right to privacy includes a student’s sexual orientation or gender identity. It is against the law for school officials to disclose or compel students to disclose this information, even if the student appears open about their sexual orientation or gender identity. *See C.N. v. Wolf*, 410 F. Supp. 2d 894, 903 (C.D. Cal. 2005).



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DISCIPLINE AND ARRESTS

Generally: School discipline policies and practices should be fair and equitable and should prioritize prevention and intervention rather than harsh punishments like suspension, expulsion, and referral to law enforcement. The goal of discipline should be to teach appropriate behaviors and minimize the time students spend out of class. In Spring 2015, the Center for Public Integrity released a study finding that Virginia led the country in schools referring students to law enforcement, a phenomenon known as the “school-to-prison pipeline.” Additional studies conducted by the Virginia Department of Education found that African American students and students with disabilities were disproportionately represented in both suspensions and referrals to law enforcement throughout Virginia schools. These disparities open up school districts to potential legal challenges for race and disability discrimination under federal civil rights laws. *See, e.g.*, Complaint against Richmond Public Schools, available at <https://acluva.org/en/cases/equal-treatment-richmond-public-school-students>. In order to avoid potential legal problems, and to provide a more equitable school environment, school officials should reevaluate and revise their current discipline policies and practices to create a more positive and preventative approach to student conduct. The Virginia Board of Education has provided a blueprint for schools to use in revising their outdated practices – the Model Guidance for Positive, Preventative Code of Student Conduct Policy and Alternatives to Suspension, available at http://www.doe.virginia.gov/support/student_conduct/index.shtml.

Due Process: The U.S. Constitution requires that students receive due process before disciplinary measures are imposed. This means that school officials must follow certain procedures before they can suspend or expel students from school. Students are generally entitled to receive notice prior to any suspension or expulsion. The notice must include the facts concerning the suspension or expulsion, and the basis for any accusations. The notice must also provide students an opportunity to explain their side. *See, e.g., Goss v. Lopez*, 419 U.S. 565 (1975). For Virginia’s specific procedural requirements, see Va. Code § 22.1-276.01 *et seq.*

Corporal Punishment: Corporal or physical punishment of students is strictly prohibited by Virginia law. *See* Va. Code § 22.1-279.1.

School Resource Officers: School Resource Officers (“SROs”) can protect students from outside danger, but often punish minor behaviors through ticketing and arrests. Law enforcement intervention should typically be a last resort for minor violations best handled by schools as discipline issues. For additional resources on how to limit disproportionate school-based arrests or referrals to law enforcement, visit the Model Guidance for Positive, Preventative Code of Student Conduct Policy and Alternatives to Suspension, available at http://www.doe.virginia.gov/support/student_conduct/index.shtml.



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RIGHTS OF STUDENTS WITH DISABILITIES

Students with disabilities are provided legal protections under several federal laws. The Individuals with Disabilities Education Act (“IDEA”) requires that public schools provide eligible students with disabilities a “free, appropriate public education” in the least restrictive environment. *See* 20 U.S.C. § 1400 *et seq.* As part of the IDEA, schools must affirmatively locate, identify, and evaluate children in their district for special education and related services, a process known as “child find.” Parents may also request an evaluation at any time in writing or by speaking to a teacher or administrator, and the school district must respond to the parent’s request. Schools must educate students with disabilities in the least restrictive setting possible, with an emphasis on inclusion and integration in the regular education classroom where feasible. Additionally, students receiving special education services under the IDEA, as well as students suspected of being eligible to receive services, are entitled to certain protections and safeguards in the school discipline process. *See* 34 C.F.R. § 300.530 *et seq.*

Students with disabilities are also provided with protections under Section 504 of the Rehabilitation Act of 1974 (“Section 504”) and Title II of the Americans with Disabilities Act (“ADA”). Section 504 and the ADA prohibit discrimination against students with disabilities. This means that schools are prohibited by federal law from denying students with disabilities equal access to academic courses, field trips, extracurricular activities, school technology, and health services. School officials also have a duty to ensure that students with disabilities are not being discriminated against by being denied necessary accommodations. Restricting access to educational activities and opportunities, ignoring harassment and bullying, and failing to train staff on compliance with these laws is also prohibited under Section 504 and the ADA. *See also* Va. Code § 22.1-213 *et seq.*

RIGHTS OF IMMIGRANT STUDENTS

Schools cannot discriminate against students on the basis of race, color, or national origin. This includes discriminating against students on the basis of their immigration status. Undocumented students have a right to a free public education in your school district regardless of their immigration status, and schools cannot deny students of this right. *See, e.g., Plyler v. Doe*, 457 U.S. 202 (1982). Likewise, schools are not permitted to deny enrollment to a student based on their undocumented status; treat a student differently to determine residency; make inquiries of students or parents that may expose their undocumented status; require social security numbers from parents or students for purposes of enrollment; or engage in any other practices which may chill the right of access to school. Schools cannot turn away students with limited English proficiency; they must be provided with language instruction. *See, e.g., Lau v. Nichols*, 414 U.S. 563 (1974).

School officials should not allow immigration enforcement actions on school grounds without a judicial warrant based on probable cause that a criminal violation of the immigration laws has occurred. Schools should not call immigration authorities on students or consent to any immigration enforcement on school grounds without a criminal warrant. There is no state law requiring any state or local official to contact immigration officials nor any state or federal law prohibiting adoption of a policy that protects students and teachers from immigration action in the absence of a judicial criminal warrant.

RIGHTS OF PREGNANT STUDENTS

Schools are prohibited from excluding pregnant students and students with children under Title IX of the Education Amendments of 1972. This means that schools must also ensure that pregnant students or students with children have access to educational instruction, school activities, and reasonable accommodations, to the same extent that students with temporary medical conditions are given access, including the ability to make up missed classwork and learn in a safe, nonjudgmental environment. Schools are also not allowed to punish students who choose to terminate a pregnancy or to reveal a student's private medical information.



AMERICAN CIVIL LIBERTIES UNION
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Dr. Olwen Herron
Williamsburg-James City County
PO Box 8783
Williamsburg, VA 23187

RE: Students' Rights Reminder for the 2019-2020 Academic Year

Dear Superintendent,

As our communities prepare for the new academic year and students head back to school, it is important to be aware of the key issues affecting Virginia's students and their rights. Being aware of students' rights under state and federal law can help school officials avoid any potential legal complications and contribute to a positive learning environment that will allow each student to thrive.



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RIGHTS OF STUDENTS WITH DISABILITIES

Students with disabilities are provided legal protections under several federal laws. The Individuals with Disabilities Education Act (“IDEA”) requires that public schools provide eligible students with disabilities a “free, appropriate public education” in the least restrictive environment. *See* 20 U.S.C. § 1400 *et seq.* As part of the IDEA, schools must affirmatively locate, identify, and evaluate children in their district for special education and related services, a process known as “child find.” Parents may also request an evaluation at any time in writing or by speaking to a teacher or administrator, and the school district must respond to the parent’s request. Schools must educate students with disabilities in the least restrictive setting possible, with an emphasis on inclusion and integration in the regular education classroom where feasible. Additionally, students receiving special education services under the IDEA, as well as students suspected of being eligible to receive services, are entitled to certain protections and safeguards in the school discipline process. *See* 34 C.F.R. § 300.530 *et seq.*

Students with disabilities are also provided with protections under Section 504 of the Rehabilitation Act of 1974 (“Section 504”) and Title II of the Americans with Disabilities Act (“ADA”). Section 504 and the ADA prohibit discrimination against students with disabilities. This means that schools are prohibited by federal law from denying students with disabilities equal access to academic courses, field trips, extracurricular activities, school technology, and health services. School officials also have a duty to ensure that students with disabilities are not being discriminated against by being denied necessary accommodations. Restricting access to educational activities and opportunities, ignoring harassment and bullying, and failing to train staff on compliance with these laws is also prohibited under Section 504 and the ADA. *See also* Va. Code § 22.1-213 *et seq.*

RIGHTS OF IMMIGRANT STUDENTS

Schools cannot discriminate against students on the basis of race, color, or national origin. This includes discriminating against students on the basis of their immigration status. Undocumented students have a right to a free public education in your school district regardless of their immigration status, and schools cannot deny students of this right. *See, e.g., Plyler v. Doe*, 457 U.S. 202 (1982). Likewise, schools are not permitted to deny enrollment to a student based on their undocumented status; treat a student differently to determine residency; make inquiries of students or parents that may expose their undocumented status; require social security numbers from parents or students for purposes of enrollment; or engage in any other practices which may chill the right of access to school. Schools cannot turn away students with limited English proficiency; they must be provided with language instruction. *See, e.g., Lau v. Nichols*, 414 U.S. 563 (1974).

School officials should not allow immigration enforcement actions on school grounds without a judicial warrant based on probable cause that a criminal violation of the immigration laws has occurred. Schools should not call immigration authorities on students or consent to any immigration enforcement on school grounds without a criminal warrant. There is no state law requiring any state or local official to contact immigration officials nor any state or federal law prohibiting adoption of a policy that protects students and teachers from immigration action in the absence of a judicial criminal warrant.

RIGHTS OF PREGNANT STUDENTS

Schools are prohibited from excluding pregnant students and students with children under Title IX of the Education Amendments of 1972. This means that schools must also ensure that pregnant students or students with children have access to educational instruction, school activities, and reasonable accommodations, to the same extent that students with temporary medical conditions are given access, including the ability to make up missed classwork and learn in a safe, nonjudgmental environment. Schools are also not allowed to punish students who choose to terminate a pregnancy or to reveal a student's private medical information.



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Dr. Jason Van Heukelum
Winchester
12 N Washington St
Winchester, VA 22601

RE: Students' Rights Reminder for the 2019-2020 Academic Year

Dear Superintendent,

As our communities prepare for the new academic year and students head back to school, it is important to be aware of the key issues affecting Virginia's students and their rights. Being aware of students' rights under state and federal law can help school officials avoid any potential legal complications and contribute to a positive learning environment that will allow each student to thrive.



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Federal and state laws afford children enrolled in school protection from discrimination and harassment based on race, color, religion, sex, national origin, or disability. Schools are responsible for ensuring these rights are protected and for promoting a safe school atmosphere. Additionally, schools are responsible for ensuring that students' right to free speech is respected and that the freedom to practice their religion—or no religion at all— is upheld.

Summarized below you will find information regarding: student speech rights; the Pledge of Allegiance; censorship; religious beliefs and accommodations; the rights of students who identify as LGBTQ; discipline and arrests; the rights of students with disabilities; the rights of students who are immigrants; and the rights of students who are pregnant.

We hope this information will help your school district understand the rights of students in schools and guide you in taking actions that ensure student rights are protected in a safe and supportive environment. Please do not hesitate to contact the ACLU of Virginia if you have any questions about these issues or if we can be of any assistance to you in evaluating and formulating school policy on any of these matters. We can be reached at (804) 644-8022 or acluva@acluva.org.

Very truly yours,

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Claire G. Gastañaga
Executive Director



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STUDENT SPEECH RIGHTS

The First Amendment ensures that students cannot be punished for exercising free speech rights, even if administrators do not approve of their message. In the landmark Supreme Court case *Tinker v. Des Moines Independent Community School District*, the ACLU successfully challenged a school district's decision to suspend three students for wearing armbands in protest of the Vietnam War. 393 U.S. 503 (1969). The court declared that students and teachers do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." *Id.* at 506. Over the years, the ACLU has also successfully defended the right of students to wear an anti-abortion armband, a pro-LGBTQ t-shirt, and shirts critical of political figures. Schools may not discipline students for expressing an idea or political viewpoint in class or during school activities, as long as it does not cause a substantial disruption to the school environment.

It is true that the constitutional rights of students in public school are not the same as those of adults exercising First Amendment rights on public streets. Students' speech rights may be limited by reasonable time, place, and manner restrictions because of the unique characteristics of the school environment. A school may limit student speech, for example, through reasonable school-wide policies against cyberbullying. Additionally, schools may prohibit vulgar or offensive speech that is inconsistent with the "fundamental values of public school education." *Bethel Sch. Dist. No. 43 v. Fraser*, 478 U.S. 675, 685-86 (1986).

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RELIGIOUS BELIEFS AND ACCOMMODATIONS

Free Exercise Clause: Under the First Amendment’s Free Exercise Clause, students have the right to worship as they see fit, with only limited restrictions. This means that while at school, students are free to practice their religion or nonreligion and to express themselves religiously without interference by school officials. Students may, for example, wear religious attire or clothing with religious messaging to school; post religious messages or images on their lockers; or bring religious materials, including religious texts or objects, to school. School officials may not, for instance, require students to remove their hijab, yarmulke, or other head covering, as it substantially burdens the practice of the student’s religion. *See, e.g., Va. Code § 22.1-203.1 et seq.; VIRGINIA STATE BOARD OF EDUCATION, GUIDELINES CONCERNING RELIGIOUS ACTIVITY IN THE PUBLIC SCHOOLS* (1995).

Establishment Clause: Under the First Amendment’s Establishment Clause, school officials cannot favor one religion over another or favor religion over nonbelief. In practice, this means that school officials and teachers cannot conduct prayer or bible-reading sessions, organize or participate in student-led prayer, or hold a prayer at graduation or sporting events, even when participation is voluntary. *See, e.g., Abington Sch. Dist. v. Schempp*, 374 U.S. 203 (1963); *Engel v. Vitale*, 370 U.S. 421 (1962); *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 308 (2000); *Lee v. Weisman*, 505 U.S. 577 (1992). Teachers cannot lead students in devotional activities or encourage student participation in religious activity before or after school, during class, or at school-sponsored activities. In fact, in the public-school context, the Supreme Court has invalidated almost every instance of school- or teacher-sponsored religious expression. Under Virginia law, school boards are permitted to establish a daily observance of one minute of silence, but the school board must be careful to ensure that its policy has secular justifications and is not merely a pretense to encourage prayer. *See, e.g., Va. Code § 22.1-203; VIRGINIA STATE BOARD OF EDUCATION, GUIDELINES CONCERNING RELIGIOUS ACTIVITY IN THE PUBLIC SCHOOLS* (1995).

RIGHTS OF LGBTQ STUDENTS

Cultivating a Safe Environment: Bullying of lesbian, gay, bisexual, transgender, and queer (“LGBTQ”) students has been documented as pervasive at many schools and is all too often ignored, or even encouraged, by school officials. LGBTQ students have a right to live their authentic lives and express themselves at school. Students have a right to be out of the closet at school, and conversely, public schools are not allowed to “out” students publicly. School officials and administrators must ensure they are creating a safe learning environment and protecting LGBTQ students from bullying and harassment. *See, e.g., Title IX, 20 U.S.C. § 1681* (schools may be liable if they act with deliberate indifference in failing to protect students from severe harassment on the basis of sex).



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Discipline: The intimate relationships of LGBTQ students must be treated with equal dignity as those of heterosexual students. Policies that prohibit same-sex couples or dates from attending prom, homecoming, or other dance functions violates students’ rights under Title IX of the Education Amendments of 1972, the Equal Protection Clause of the U.S. Constitution, and the Bill of Rights of the Virginia Constitution. LGBTQ students should not be punished more severely than heterosexual students for similar behavior, including for displays of affection.

LGBTQ Student Organizations: Students interested in forming a student organization, typically called a gay-straight alliance (“GSA”), are to be treated the same as students forming any other noncurricular organization or club. *See, e.g., 20 U.S.C. § 4071(a)* (if a school allows any noncurricular student group to meet, it cannot deny other groups the same access based on the content of their interest); *Gay All. of Students v. Matthews*, 544 F.2d 162 (4th Cir. 1976).

Gender Markers, Pronouns, and Student Records: Students should be addressed using their preferred names and pronouns. Refusing to do so, or refusing to update the gender markers on a student’s records when provided with appropriate documentation, may be considered a form of sex-based discrimination under federal law. *See Grimm v. Gloucester County Sch. Bd.*, Civil No. 4:15-cv-52, 2019 U.S. Dist. Lexis 138246 (E.D. Va. Aug. 9, 2019). Likewise, a student’s right to privacy includes a student’s sexual orientation or gender identity. It is against the law for school officials to disclose or compel students to disclose this information, even if the student appears open about their sexual orientation or gender identity. *See C.N. v. Wolf*, 410 F. Supp. 2d 894, 903 (C.D. Cal. 2005).



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DISCIPLINE AND ARRESTS

Generally: School discipline policies and practices should be fair and equitable and should prioritize prevention and intervention rather than harsh punishments like suspension, expulsion, and referral to law enforcement. The goal of discipline should be to teach appropriate behaviors and minimize the time students spend out of class. In Spring 2015, the Center for Public Integrity released a study finding that Virginia led the country in schools referring students to law enforcement, a phenomenon known as the “school-to-prison pipeline.” Additional studies conducted by the Virginia Department of Education found that African American students and students with disabilities were disproportionately represented in both suspensions and referrals to law enforcement throughout Virginia schools. These disparities open up school districts to potential legal challenges for race and disability discrimination under federal civil rights laws. *See, e.g.*, Complaint against Richmond Public Schools, available at <https://acluva.org/en/cases/equal-treatment-richmond-public-school-students>. In order to avoid potential legal problems, and to provide a more equitable school environment, school officials should reevaluate and revise their current discipline policies and practices to create a more positive and preventative approach to student conduct. The Virginia Board of Education has provided a blueprint for schools to use in revising their outdated practices – the Model Guidance for Positive, Preventative Code of Student Conduct Policy and Alternatives to Suspension, available at http://www.doe.virginia.gov/support/student_conduct/index.shtml.

Due Process: The U.S. Constitution requires that students receive due process before disciplinary measures are imposed. This means that school officials must follow certain procedures before they can suspend or expel students from school. Students are generally entitled to receive notice prior to any suspension or expulsion. The notice must include the facts concerning the suspension or expulsion, and the basis for any accusations. The notice must also provide students an opportunity to explain their side. *See, e.g., Goss v. Lopez*, 419 U.S. 565 (1975). For Virginia’s specific procedural requirements, see Va. Code § 22.1-276.01 *et seq.*

Corporal Punishment: Corporal or physical punishment of students is strictly prohibited by Virginia law. *See* Va. Code § 22.1-279.1.

School Resource Officers: School Resource Officers (“SROs”) can protect students from outside danger, but often punish minor behaviors through ticketing and arrests. Law enforcement intervention should typically be a last resort for minor violations best handled by schools as discipline issues. For additional resources on how to limit disproportionate school-based arrests or referrals to law enforcement, visit the Model Guidance for Positive, Preventative Code of Student Conduct Policy and Alternatives to Suspension, available at http://www.doe.virginia.gov/support/student_conduct/index.shtml.



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RIGHTS OF PREGNANT STUDENTS

Schools are prohibited from excluding pregnant students and students with children under Title IX of the Education Amendments of 1972. This means that schools must also ensure that pregnant students or students with children have access to educational instruction, school activities, and reasonable accommodations, to the same extent that students with temporary medical conditions are given access, including the ability to make up missed classwork and learn in a safe, nonjudgmental environment. Schools are also not allowed to punish students who choose to terminate a pregnancy or to reveal a student's private medical information.



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Dr. Gregory Clark Mullins
Wise County
628 Lake Street NE
Wise, VA 24293

RE: Students' Rights Reminder for the 2019-2020 Academic Year

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Gender Markers, Pronouns, and Student Records: Students should be addressed using their preferred names and pronouns. Refusing to do so, or refusing to update the gender markers on a student’s records when provided with appropriate documentation, may be considered a form of sex-based discrimination under federal law. *See Grimm v. Gloucester County Sch. Bd.*, Civil No. 4:15-cv-52, 2019 U.S. Dist. Lexis 138246 (E.D. Va. Aug. 9, 2019). Likewise, a student’s right to privacy includes a student’s sexual orientation or gender identity. It is against the law for school officials to disclose or compel students to disclose this information, even if the student appears open about their sexual orientation or gender identity. *See C.N. v. Wolf*, 410 F. Supp. 2d 894, 903 (C.D. Cal. 2005).



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DISCIPLINE AND ARRESTS

Generally: School discipline policies and practices should be fair and equitable and should prioritize prevention and intervention rather than harsh punishments like suspension, expulsion, and referral to law enforcement. The goal of discipline should be to teach appropriate behaviors and minimize the time students spend out of class. In Spring 2015, the Center for Public Integrity released a study finding that Virginia led the country in schools referring students to law enforcement, a phenomenon known as the “school-to-prison pipeline.” Additional studies conducted by the Virginia Department of Education found that African American students and students with disabilities were disproportionately represented in both suspensions and referrals to law enforcement throughout Virginia schools. These disparities open up school districts to potential legal challenges for race and disability discrimination under federal civil rights laws. *See, e.g.*, Complaint against Richmond Public Schools, available at <https://acluva.org/en/cases/equal-treatment-richmond-public-school-students>. In order to avoid potential legal problems, and to provide a more equitable school environment, school officials should reevaluate and revise their current discipline policies and practices to create a more positive and preventative approach to student conduct. The Virginia Board of Education has provided a blueprint for schools to use in revising their outdated practices – the Model Guidance for Positive, Preventative Code of Student Conduct Policy and Alternatives to Suspension, available at http://www.doe.virginia.gov/support/student_conduct/index.shtml.

Due Process: The U.S. Constitution requires that students receive due process before disciplinary measures are imposed. This means that school officials must follow certain procedures before they can suspend or expel students from school. Students are generally entitled to receive notice prior to any suspension or expulsion. The notice must include the facts concerning the suspension or expulsion, and the basis for any accusations. The notice must also provide students an opportunity to explain their side. *See, e.g., Goss v. Lopez*, 419 U.S. 565 (1975). For Virginia’s specific procedural requirements, see Va. Code § 22.1-276.01 *et seq.*

Corporal Punishment: Corporal or physical punishment of students is strictly prohibited by Virginia law. *See* Va. Code § 22.1-279.1.

School Resource Officers: School Resource Officers (“SROs”) can protect students from outside danger, but often punish minor behaviors through ticketing and arrests. Law enforcement intervention should typically be a last resort for minor violations best handled by schools as discipline issues. For additional resources on how to limit disproportionate school-based arrests or referrals to law enforcement, visit the Model Guidance for Positive, Preventative Code of Student Conduct Policy and Alternatives to Suspension, available at http://www.doe.virginia.gov/support/student_conduct/index.shtml.



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RIGHTS OF STUDENTS WITH DISABILITIES

Students with disabilities are provided legal protections under several federal laws. The Individuals with Disabilities Education Act (“IDEA”) requires that public schools provide eligible students with disabilities a “free, appropriate public education” in the least restrictive environment. *See* 20 U.S.C. § 1400 *et seq.* As part of the IDEA, schools must affirmatively locate, identify, and evaluate children in their district for special education and related services, a process known as “child find.” Parents may also request an evaluation at any time in writing or by speaking to a teacher or administrator, and the school district must respond to the parent’s request. Schools must educate students with disabilities in the least restrictive setting possible, with an emphasis on inclusion and integration in the regular education classroom where feasible. Additionally, students receiving special education services under the IDEA, as well as students suspected of being eligible to receive services, are entitled to certain protections and safeguards in the school discipline process. *See* 34 C.F.R. § 300.530 *et seq.*

Students with disabilities are also provided with protections under Section 504 of the Rehabilitation Act of 1974 (“Section 504”) and Title II of the Americans with Disabilities Act (“ADA”). Section 504 and the ADA prohibit discrimination against students with disabilities. This means that schools are prohibited by federal law from denying students with disabilities equal access to academic courses, field trips, extracurricular activities, school technology, and health services. School officials also have a duty to ensure that students with disabilities are not being discriminated against by being denied necessary accommodations. Restricting access to educational activities and opportunities, ignoring harassment and bullying, and failing to train staff on compliance with these laws is also prohibited under Section 504 and the ADA. *See also* Va. Code § 22.1-213 *et seq.*

RIGHTS OF IMMIGRANT STUDENTS

Schools cannot discriminate against students on the basis of race, color, or national origin. This includes discriminating against students on the basis of their immigration status. Undocumented students have a right to a free public education in your school district regardless of their immigration status, and schools cannot deny students of this right. *See, e.g., Plyler v. Doe*, 457 U.S. 202 (1982). Likewise, schools are not permitted to deny enrollment to a student based on their undocumented status; treat a student differently to determine residency; make inquiries of students or parents that may expose their undocumented status; require social security numbers from parents or students for purposes of enrollment; or engage in any other practices which may chill the right of access to school. Schools cannot turn away students with limited English proficiency; they must be provided with language instruction. *See, e.g., Lau v. Nichols*, 414 U.S. 563 (1974).

School officials should not allow immigration enforcement actions on school grounds without a judicial warrant based on probable cause that a criminal violation of the immigration laws has occurred. Schools should not call immigration authorities on students or consent to any immigration enforcement on school grounds without a criminal warrant. There is no state law requiring any state or local official to contact immigration officials nor any state or federal law prohibiting adoption of a policy that protects students and teachers from immigration action in the absence of a judicial criminal warrant.

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Schools are prohibited from excluding pregnant students and students with children under Title IX of the Education Amendments of 1972. This means that schools must also ensure that pregnant students or students with children have access to educational instruction, school activities, and reasonable accommodations, to the same extent that students with temporary medical conditions are given access, including the ability to make up missed classwork and learn in a safe, nonjudgmental environment. Schools are also not allowed to punish students who choose to terminate a pregnancy or to reveal a student's private medical information.



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Dr. Scott L. Jefferies
Wythe County
1570 W Reservoir St
Wytheville, VA 24382

RE: Students' Rights Reminder for the 2019-2020 Academic Year

Dear Superintendent,

As our communities prepare for the new academic year and students head back to school, it is important to be aware of the key issues affecting Virginia's students and their rights. Being aware of students' rights under state and federal law can help school officials avoid any potential legal complications and contribute to a positive learning environment that will allow each student to thrive.



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Federal and state laws afford children enrolled in school protection from discrimination and harassment based on race, color, religion, sex, national origin, or disability. Schools are responsible for ensuring these rights are protected and for promoting a safe school atmosphere. Additionally, schools are responsible for ensuring that students' right to free speech is respected and that the freedom to practice their religion—or no religion at all— is upheld.

Summarized below you will find information regarding: student speech rights; the Pledge of Allegiance; censorship; religious beliefs and accommodations; the rights of students who identify as LGBTQ; discipline and arrests; the rights of students with disabilities; the rights of students who are immigrants; and the rights of students who are pregnant.

We hope this information will help your school district understand the rights of students in schools and guide you in taking actions that ensure student rights are protected in a safe and supportive environment. Please do not hesitate to contact the ACLU of Virginia if you have any questions about these issues or if we can be of any assistance to you in evaluating and formulating school policy on any of these matters. We can be reached at (804) 644-8022 or acluva@acluva.org.

Very truly yours,

A handwritten signature in blue ink, which appears to read "Claire G. Gastañaga". The signature is fluid and cursive.

Claire G. Gastañaga
Executive Director



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STUDENT SPEECH RIGHTS

The First Amendment ensures that students cannot be punished for exercising free speech rights, even if administrators do not approve of their message. In the landmark Supreme Court case *Tinker v. Des Moines Independent Community School District*, the ACLU successfully challenged a school district's decision to suspend three students for wearing armbands in protest of the Vietnam War. 393 U.S. 503 (1969). The court declared that students and teachers do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." *Id.* at 506. Over the years, the ACLU has also successfully defended the right of students to wear an anti-abortion armband, a pro-LGBTQ t-shirt, and shirts critical of political figures. Schools may not discipline students for expressing an idea or political viewpoint in class or during school activities, as long as it does not cause a substantial disruption to the school environment.

It is true that the constitutional rights of students in public school are not the same as those of adults exercising First Amendment rights on public streets. Students' speech rights may be limited by reasonable time, place, and manner restrictions because of the unique characteristics of the school environment. A school may limit student speech, for example, through reasonable school-wide policies against cyberbullying. Additionally, schools may prohibit vulgar or offensive speech that is inconsistent with the "fundamental values of public school education." *Bethel Sch. Dist. No. 43 v. Fraser*, 478 U.S. 675, 685-86 (1986).

School officials should take care, however, not to define peaceful assembly as behavior that causes a substantial disruption to school activities. If students engage in a walkout, school officials may choose to discipline students for missing class but may not engage in harsher punishment because of the message or political nature of the action. School officials must not draw distinctions based on the content of a student's speech or expressive activity in imposing discipline.

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Schools cannot punish students for refusing to salute the flag or say the Pledge of Allegiance. *W.Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624 (1943); *Sherman v. Comm. Consol. Sch. Dist. 21*, 980 F.2d 437 (7th Cir. 1992). School officials also cannot force students to stand during the Pledge of Allegiance or leave the room if a student refuses to recite the Pledge. *See* Va. Code § 22.1-202(C) ("[N]o student shall be compelled to recite the Pledge if he, his parent or legal guardian objects on religious, philosophical or other grounds to his participating in this exercise.")

CENSORSHIP

Books: Banning books, removing books and materials from a classroom or library, or otherwise making it difficult for students to read a broad array of literature limits intellectual freedom. Making books and ideas unavailable based on their content or viewpoint or taking books out of schools because they are controversial, unpopular, or offensive, may violate the First Amendment. *See, e.g., Bd. of Educ. v. Pico*, 457 U.S. 853 (1982). Courts view school libraries as the main place where students exercise their freedom "to inquire, to study and to evaluate, to gain new maturity and understanding." *Id.* at 868.

Student Publications: Schools may review and control the content of school sponsored student publications including student newspapers, yearbooks, literary magazines, on-campus videos, and radio broadcasts. But schools cannot control student publications that are not sponsored or funded by the school, not done as part of a class or school project, or that are done on a student’s own time with their own resources. *See, e.g., Burt v. Barker*, 861 F.2d 1149 (9th Cir. 1988); *Fujishima v. Bd. of Ed.*, 160 F.2d 1355 (7th Cir. 1972); *Eisner v. Stanford Bd. of Ed.*, 440 F.2d 803 (2d Cir. 1971).

RELIGIOUS BELIEFS AND ACCOMMODATIONS

Free Exercise Clause: Under the First Amendment’s Free Exercise Clause, students have the right to worship as they see fit, with only limited restrictions. This means that while at school, students are free to practice their religion or nonreligion and to express themselves religiously without interference by school officials. Students may, for example, wear religious attire or clothing with religious messaging to school; post religious messages or images on their lockers; or bring religious materials, including religious texts or objects, to school. School officials may not, for instance, require students to remove their hijab, yarmulke, or other head covering, as it substantially burdens the practice of the student’s religion. *See, e.g., Va. Code § 22.1-203.1 et seq.; VIRGINIA STATE BOARD OF EDUCATION, GUIDELINES CONCERNING RELIGIOUS ACTIVITY IN THE PUBLIC SCHOOLS* (1995).

Establishment Clause: Under the First Amendment’s Establishment Clause, school officials cannot favor one religion over another or favor religion over nonbelief. In practice, this means that school officials and teachers cannot conduct prayer or bible-reading sessions, organize or participate in student-led prayer, or hold a prayer at graduation or sporting events, even when participation is voluntary. *See, e.g., Abington Sch. Dist. v. Schempp*, 374 U.S. 203 (1963); *Engel v. Vitale*, 370 U.S. 421 (1962); *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 308 (2000); *Lee v. Weisman*, 505 U.S. 577 (1992). Teachers cannot lead students in devotional activities or encourage student participation in religious activity before or after school, during class, or at school-sponsored activities. In fact, in the public-school context, the Supreme Court has invalidated almost every instance of school- or teacher-sponsored religious expression. Under Virginia law, school boards are permitted to establish a daily observance of one minute of silence, but the school board must be careful to ensure that its policy has secular justifications and is not merely a pretense to encourage prayer. *See, e.g., Va. Code § 22.1-203; VIRGINIA STATE BOARD OF EDUCATION, GUIDELINES CONCERNING RELIGIOUS ACTIVITY IN THE PUBLIC SCHOOLS* (1995).

RIGHTS OF LGBTQ STUDENTS

Cultivating a Safe Environment: Bullying of lesbian, gay, bisexual, transgender, and queer (“LGBTQ”) students has been documented as pervasive at many schools and is all too often ignored, or even encouraged, by school officials. LGBTQ students have a right to live their authentic lives and express themselves at school. Students have a right to be out of the closet at school, and conversely, public schools are not allowed to “out” students publicly. School officials and administrators must ensure they are creating a safe learning environment and protecting LGBTQ students from bullying and harassment. *See, e.g., Title IX, 20 U.S.C. § 1681* (schools may be liable if they act with deliberate indifference in failing to protect students from severe harassment on the basis of sex).



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Restrooms & Locker Rooms: Transgender students must be allowed to use the restroom facilities consistent with their gender identity. Schools cannot create policies that require transgender students to use restrooms or locker rooms that do not correspond with their gender identity, and schools may not create policies that require transgender students to use single-user facilities. *See Grimm v. Gloucester County Sch. Bd.*, Civil No. 4:15-cv-52, 2019 U.S. Dist. Lexis 138246 (E.D. Va. Aug. 9, 2019).

Dress Code: School officials cannot force students to wear clothing inconsistent with their gender identity. Public schools may have dress codes, but dress codes cannot treat students differently based on their gender, force students to conform to sex stereotypes, or censor particular viewpoints. Schools cannot enact dress codes based on the stereotype that only girls can wear some types of clothes and only boys wear other types of clothes. *See, e.g., U.S. v. Virginia*, 518 U.S. 515, 533 (1996) (government actors must not treat male and female students differently because of “overbroad generalizations about the different talents, capacities, or preferences of males and females.”). Schools may, for example, require that skirts be a certain length; however, they cannot require that some students wear skirts and prohibit others from doing so based on the student’s sex or gender expression. This also applies to pants, ties, or other clothing associated with traditional gender roles. And it applies to attire requirements for homecoming, prom, graduation, and other special school events.

Discipline: The intimate relationships of LGBTQ students must be treated with equal dignity as those of heterosexual students. Policies that prohibit same-sex couples or dates from attending prom, homecoming, or other dance functions violates students’ rights under Title IX of the Education Amendments of 1972, the Equal Protection Clause of the U.S. Constitution, and the Bill of Rights of the Virginia Constitution. LGBTQ students should not be punished more severely than heterosexual students for similar behavior, including for displays of affection.

LGBTQ Student Organizations: Students interested in forming a student organization, typically called a gay-straight alliance (“GSA”), are to be treated the same as students forming any other noncurricular organization or club. *See, e.g., 20 U.S.C. § 4071(a)* (if a school allows any noncurricular student group to meet, it cannot deny other groups the same access based on the content of their interest); *Gay All. of Students v. Matthews*, 544 F.2d 162 (4th Cir. 1976).

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DISCIPLINE AND ARRESTS

Generally: School discipline policies and practices should be fair and equitable and should prioritize prevention and intervention rather than harsh punishments like suspension, expulsion, and referral to law enforcement. The goal of discipline should be to teach appropriate behaviors and minimize the time students spend out of class. In Spring 2015, the Center for Public Integrity released a study finding that Virginia led the country in schools referring students to law enforcement, a phenomenon known as the “school-to-prison pipeline.” Additional studies conducted by the Virginia Department of Education found that African American students and students with disabilities were disproportionately represented in both suspensions and referrals to law enforcement throughout Virginia schools. These disparities open up school districts to potential legal challenges for race and disability discrimination under federal civil rights laws. *See, e.g.*, Complaint against Richmond Public Schools, available at <https://acluva.org/en/cases/equal-treatment-richmond-public-school-students>. In order to avoid potential legal problems, and to provide a more equitable school environment, school officials should reevaluate and revise their current discipline policies and practices to create a more positive and preventative approach to student conduct. The Virginia Board of Education has provided a blueprint for schools to use in revising their outdated practices – the Model Guidance for Positive, Preventative Code of Student Conduct Policy and Alternatives to Suspension, available at http://www.doe.virginia.gov/support/student_conduct/index.shtml.

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RIGHTS OF PREGNANT STUDENTS

Schools are prohibited from excluding pregnant students and students with children under Title IX of the Education Amendments of 1972. This means that schools must also ensure that pregnant students or students with children have access to educational instruction, school activities, and reasonable accommodations, to the same extent that students with temporary medical conditions are given access, including the ability to make up missed classwork and learn in a safe, nonjudgmental environment. Schools are also not allowed to punish students who choose to terminate a pregnancy or to reveal a student's private medical information.



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Dr. Victor D. Shandor
York County
302 Dare Rd
Yorktown, VA 23692

RE: Students' Rights Reminder for the 2019-2020 Academic Year

Dear Superintendent,

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Claire G. Gastañaga
Executive Director



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Establishment Clause: Under the First Amendment’s Establishment Clause, school officials cannot favor one religion over another or favor religion over nonbelief. In practice, this means that school officials and teachers cannot conduct prayer or bible-reading sessions, organize or participate in student-led prayer, or hold a prayer at graduation or sporting events, even when participation is voluntary. *See, e.g., Abington Sch. Dist. v. Schempp*, 374 U.S. 203 (1963); *Engel v. Vitale*, 370 U.S. 421 (1962); *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 308 (2000); *Lee v. Weisman*, 505 U.S. 577 (1992). Teachers cannot lead students in devotional activities or encourage student participation in religious activity before or after school, during class, or at school-sponsored activities. In fact, in the public-school context, the Supreme Court has invalidated almost every instance of school- or teacher-sponsored religious expression. Under Virginia law, school boards are permitted to establish a daily observance of one minute of silence, but the school board must be careful to ensure that its policy has secular justifications and is not merely a pretense to encourage prayer. *See, e.g., Va. Code § 22.1-203; VIRGINIA STATE BOARD OF EDUCATION, GUIDELINES CONCERNING RELIGIOUS ACTIVITY IN THE PUBLIC SCHOOLS* (1995).

RIGHTS OF LGBTQ STUDENTS

Cultivating a Safe Environment: Bullying of lesbian, gay, bisexual, transgender, and queer (“LGBTQ”) students has been documented as pervasive at many schools and is all too often ignored, or even encouraged, by school officials. LGBTQ students have a right to live their authentic lives and express themselves at school. Students have a right to be out of the closet at school, and conversely, public schools are not allowed to “out” students publicly. School officials and administrators must ensure they are creating a safe learning environment and protecting LGBTQ students from bullying and harassment. *See, e.g., Title IX, 20 U.S.C. § 1681* (schools may be liable if they act with deliberate indifference in failing to protect students from severe harassment on the basis of sex).



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Discipline: The intimate relationships of LGBTQ students must be treated with equal dignity as those of heterosexual students. Policies that prohibit same-sex couples or dates from attending prom, homecoming, or other dance functions violates students’ rights under Title IX of the Education Amendments of 1972, the Equal Protection Clause of the U.S. Constitution, and the Bill of Rights of the Virginia Constitution. LGBTQ students should not be punished more severely than heterosexual students for similar behavior, including for displays of affection.

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Gender Markers, Pronouns, and Student Records: Students should be addressed using their preferred names and pronouns. Refusing to do so, or refusing to update the gender markers on a student’s records when provided with appropriate documentation, may be considered a form of sex-based discrimination under federal law. *See Grimm v. Gloucester County Sch. Bd.*, Civil No. 4:15-cv-52, 2019 U.S. Dist. Lexis 138246 (E.D. Va. Aug. 9, 2019). Likewise, a student’s right to privacy includes a student’s sexual orientation or gender identity. It is against the law for school officials to disclose or compel students to disclose this information, even if the student appears open about their sexual orientation or gender identity. *See C.N. v. Wolf*, 410 F. Supp. 2d 894, 903 (C.D. Cal. 2005).



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DISCIPLINE AND ARRESTS

Generally: School discipline policies and practices should be fair and equitable and should prioritize prevention and intervention rather than harsh punishments like suspension, expulsion, and referral to law enforcement. The goal of discipline should be to teach appropriate behaviors and minimize the time students spend out of class. In Spring 2015, the Center for Public Integrity released a study finding that Virginia led the country in schools referring students to law enforcement, a phenomenon known as the “school-to-prison pipeline.” Additional studies conducted by the Virginia Department of Education found that African American students and students with disabilities were disproportionately represented in both suspensions and referrals to law enforcement throughout Virginia schools. These disparities open up school districts to potential legal challenges for race and disability discrimination under federal civil rights laws. *See, e.g.*, Complaint against Richmond Public Schools, available at <https://acluva.org/en/cases/equal-treatment-richmond-public-school-students>. In order to avoid potential legal problems, and to provide a more equitable school environment, school officials should reevaluate and revise their current discipline policies and practices to create a more positive and preventative approach to student conduct. The Virginia Board of Education has provided a blueprint for schools to use in revising their outdated practices – the Model Guidance for Positive, Preventative Code of Student Conduct Policy and Alternatives to Suspension, available at http://www.doe.virginia.gov/support/student_conduct/index.shtml.

Due Process: The U.S. Constitution requires that students receive due process before disciplinary measures are imposed. This means that school officials must follow certain procedures before they can suspend or expel students from school. Students are generally entitled to receive notice prior to any suspension or expulsion. The notice must include the facts concerning the suspension or expulsion, and the basis for any accusations. The notice must also provide students an opportunity to explain their side. *See, e.g., Goss v. Lopez*, 419 U.S. 565 (1975). For Virginia’s specific procedural requirements, see Va. Code § 22.1-276.01 *et seq.*

Corporal Punishment: Corporal or physical punishment of students is strictly prohibited by Virginia law. *See* Va. Code § 22.1-279.1.

School Resource Officers: School Resource Officers (“SROs”) can protect students from outside danger, but often punish minor behaviors through ticketing and arrests. Law enforcement intervention should typically be a last resort for minor violations best handled by schools as discipline issues. For additional resources on how to limit disproportionate school-based arrests or referrals to law enforcement, visit the Model Guidance for Positive, Preventative Code of Student Conduct Policy and Alternatives to Suspension, available at http://www.doe.virginia.gov/support/student_conduct/index.shtml.



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RIGHTS OF STUDENTS WITH DISABILITIES

Students with disabilities are provided legal protections under several federal laws. The Individuals with Disabilities Education Act (“IDEA”) requires that public schools provide eligible students with disabilities a “free, appropriate public education” in the least restrictive environment. *See* 20 U.S.C. § 1400 *et seq.* As part of the IDEA, schools must affirmatively locate, identify, and evaluate children in their district for special education and related services, a process known as “child find.” Parents may also request an evaluation at any time in writing or by speaking to a teacher or administrator, and the school district must respond to the parent’s request. Schools must educate students with disabilities in the least restrictive setting possible, with an emphasis on inclusion and integration in the regular education classroom where feasible. Additionally, students receiving special education services under the IDEA, as well as students suspected of being eligible to receive services, are entitled to certain protections and safeguards in the school discipline process. *See* 34 C.F.R. § 300.530 *et seq.*

Students with disabilities are also provided with protections under Section 504 of the Rehabilitation Act of 1974 (“Section 504”) and Title II of the Americans with Disabilities Act (“ADA”). Section 504 and the ADA prohibit discrimination against students with disabilities. This means that schools are prohibited by federal law from denying students with disabilities equal access to academic courses, field trips, extracurricular activities, school technology, and health services. School officials also have a duty to ensure that students with disabilities are not being discriminated against by being denied necessary accommodations. Restricting access to educational activities and opportunities, ignoring harassment and bullying, and failing to train staff on compliance with these laws is also prohibited under Section 504 and the ADA. *See also* Va. Code § 22.1-213 *et seq.*

RIGHTS OF IMMIGRANT STUDENTS

Schools cannot discriminate against students on the basis of race, color, or national origin. This includes discriminating against students on the basis of their immigration status. Undocumented students have a right to a free public education in your school district regardless of their immigration status, and schools cannot deny students of this right. *See, e.g., Plyler v. Doe*, 457 U.S. 202 (1982). Likewise, schools are not permitted to deny enrollment to a student based on their undocumented status; treat a student differently to determine residency; make inquiries of students or parents that may expose their undocumented status; require social security numbers from parents or students for purposes of enrollment; or engage in any other practices which may chill the right of access to school. Schools cannot turn away students with limited English proficiency; they must be provided with language instruction. *See, e.g., Lau v. Nichols*, 414 U.S. 563 (1974).

School officials should not allow immigration enforcement actions on school grounds without a judicial warrant based on probable cause that a criminal violation of the immigration laws has occurred. Schools should not call immigration authorities on students or consent to any immigration enforcement on school grounds without a criminal warrant. There is no state law requiring any state or local official to contact immigration officials nor any state or federal law prohibiting adoption of a policy that protects students and teachers from immigration action in the absence of a judicial criminal warrant.

RIGHTS OF PREGNANT STUDENTS

Schools are prohibited from excluding pregnant students and students with children under Title IX of the Education Amendments of 1972. This means that schools must also ensure that pregnant students or students with children have access to educational instruction, school activities, and reasonable accommodations, to the same extent that students with temporary medical conditions are given access, including the ability to make up missed classwork and learn in a safe, nonjudgmental environment. Schools are also not allowed to punish students who choose to terminate a pregnancy or to reveal a student's private medical information.



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RE: Students' Rights Reminder for the 2019-2020 Academic Year

Dear Superintendent,

As our communities prepare for the new academic year and students head back to school, it is important to be aware of the key issues affecting Virginia's students and their rights. Being aware of students' rights under state and federal law can help school officials avoid any potential legal complications and contribute to a positive learning environment that will allow each student to thrive.



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Federal and state laws afford children enrolled in school protection from discrimination and harassment based on race, color, religion, sex, national origin, or disability. Schools are responsible for ensuring these rights are protected and for promoting a safe school atmosphere. Additionally, schools are responsible for ensuring that students' right to free speech is respected and that the freedom to practice their religion—or no religion at all—is upheld.

Summarized below you will find information regarding: student speech rights; the Pledge of Allegiance; censorship; religious beliefs and accommodations; the rights of students who identify as LGBTQ; discipline and arrests; the rights of students with disabilities; the rights of students who are immigrants; and the rights of students who are pregnant.

We hope this information will help your school district understand the rights of students in schools and guide you in taking actions that ensure student rights are protected in a safe and supportive environment. Please do not hesitate to contact the ACLU of Virginia if you have any questions about these issues or if we can be of any assistance to you in evaluating and formulating school policy on any of these matters. We can be reached at (804) 644-8022 or acluva@acluva.org.

Very truly yours,

A handwritten signature in blue ink, which appears to read "Claire G. Gastañaga".

Claire G. Gastañaga
Executive Director

STUDENT SPEECH RIGHTS

The First Amendment ensures that students cannot be punished for exercising free speech rights, even if administrators do not approve of their message. In the landmark Supreme Court case *Tinker v. Des Moines Independent Community School*



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District, the ACLU successfully challenged a school district’s decision to suspend three students for wearing armbands in protest of the Vietnam War. 393 U.S. 503 (1969). The court declared that students and teachers do not “shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.” *Id.* at 506. Over the years, the ACLU has also successfully defended the right of students to wear an anti-abortion armband, a pro-LGBTQ t-shirt, and shirts critical of political figures. Schools may not discipline students for expressing an idea or political viewpoint in class or during school activities, as long as it does not cause a substantial disruption to the school environment.

It is true that the constitutional rights of students in public school are not the same as those of adults exercising First Amendment rights on public streets. Students’ speech rights may be limited by reasonable time, place, and manner restrictions because of the unique characteristics of the school environment. A school may limit student speech, for example, through reasonable school-wide policies against cyberbullying. Additionally, schools may prohibit vulgar or offensive speech that is inconsistent with the “fundamental values of public school education.” *Bethel Sch. Dist. No. 43 v. Fraser*, 478 U.S. 675, 685-86 (1986).

School officials should take care, however, not to define peaceful assembly as behavior that causes a substantial disruption to school activities. If students engage in a walkout, school officials may choose to discipline students for missing class but may not engage in harsher punishment because of the message or political nature of the action. School officials must not draw distinctions based on the content of a student’s speech or expressive activity in imposing discipline.

PLEDGE OF ALLEGIANCE

Schools cannot punish students for refusing to salute the flag or say the Pledge of Allegiance. *W.Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624 (1943); *Sherman v. Comm. Consol. Sch. Dist. 21*, 980 F.2d 437 (7th Cir. 1992). School officials also cannot force students to stand during the Pledge of Allegiance or leave the room if a student refuses to recite the Pledge. *See* Va. Code § 22.1-202(C) (“[N]o student shall be compelled to recite the Pledge if he, his parent or legal guardian objects on religious, philosophical or other grounds to his participating in this exercise.”)

CENSORSHIP

Books: Banning books, removing books and materials from a classroom or library, or otherwise making it difficult for students to read a broad array of literature limits intellectual freedom. Making books and ideas unavailable based on their content or viewpoint or taking books out of schools because they are controversial, unpopular, or offensive, may violate the First Amendment. *See, e.g., Bd. of Educ. v. Pico*, 457 U.S. 853 (1982). Courts view school libraries as the main place where students exercise their freedom “to inquire, to study and to evaluate, to gain new maturity and understanding.” *Id.* at 868.

Student Publications: Schools may review and control the content of school sponsored student publications including student newspapers, yearbooks, literary magazines, on-campus videos, and radio broadcasts. But schools cannot control student publications that are not sponsored or funded by the school, not done as part of a class or school project, or that are done on a student’s own time with their own

resources. *See, e.g., Burt v. Barker*, 861 F.2d 1149 (9th Cir. 1988); *Fujishima v. Bd. of Ed.*, 160 F.2d 1355 (7th Cir. 1972); *Eisner v. Stanford Bd. of Ed.*, 440 F.2d 803 (2d Cir. 1971).

RELIGIOUS BELIEFS AND ACCOMMODATIONS

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Students with disabilities are provided legal protections under several federal laws. The Individuals with Disabilities Education Act (“IDEA”) requires that public schools provide eligible students with disabilities a “free, appropriate public education” in the least restrictive environment. *See* 20 U.S.C. § 1400 *et seq.* As part



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of the IDEA, schools must affirmatively locate, identify, and evaluate children in their district for special education and related services, a process known as “child find.” Parents may also request an evaluation at any time in writing or by speaking to a teacher or administrator, and the school district must respond to the parent’s request. Schools must educate students with disabilities in the least restrictive setting possible, with an emphasis on inclusion and integration in the regular education classroom where feasible. Additionally, students receiving special education services under the IDEA, as well as students suspected of being eligible to receive services, are entitled to certain protections and safeguards in the school discipline process. *See* 34 C.F.R. § 300.530 *et seq.*

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Summarized below you will find information regarding: student speech rights; the Pledge of Allegiance; censorship; religious beliefs and accommodations; the rights of students who identify as LGBTQ; discipline and arrests; the rights of students with disabilities; the rights of students who are immigrants; and the rights of students who are pregnant.

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Very truly yours,

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District, the ACLU successfully challenged a school district’s decision to suspend three students for wearing armbands in protest of the Vietnam War. 393 U.S. 503 (1969). The court declared that students and teachers do not “shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.” *Id.* at 506. Over the years, the ACLU has also successfully defended the right of students to wear an anti-abortion armband, a pro-LGBTQ t-shirt, and shirts critical of political figures. Schools may not discipline students for expressing an idea or political viewpoint in class or during school activities, as long as it does not cause a substantial disruption to the school environment.

It is true that the constitutional rights of students in public school are not the same as those of adults exercising First Amendment rights on public streets. Students’ speech rights may be limited by reasonable time, place, and manner restrictions because of the unique characteristics of the school environment. A school may limit student speech, for example, through reasonable school-wide policies against cyberbullying. Additionally, schools may prohibit vulgar or offensive speech that is inconsistent with the “fundamental values of public school education.” *Bethel Sch. Dist. No. 43 v. Fraser*, 478 U.S. 675, 685-86 (1986).

School officials should take care, however, not to define peaceful assembly as behavior that causes a substantial disruption to school activities. If students engage in a walkout, school officials may choose to discipline students for missing class but may not engage in harsher punishment because of the message or political nature of the action. School officials must not draw distinctions based on the content of a student’s speech or expressive activity in imposing discipline.

PLEDGE OF ALLEGIANCE

Schools cannot punish students for refusing to salute the flag or say the Pledge of Allegiance. *W.Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624 (1943); *Sherman v. Comm. Consol. Sch. Dist. 21*, 980 F.2d 437 (7th Cir. 1992). School officials also cannot force students to stand during the Pledge of Allegiance or leave the room if a student refuses to recite the Pledge. *See* Va. Code § 22.1-202(C) (“[N]o student shall be compelled to recite the Pledge if he, his parent or legal guardian objects on religious, philosophical or other grounds to his participating in this exercise.”)

CENSORSHIP

Books: Banning books, removing books and materials from a classroom or library, or otherwise making it difficult for students to read a broad array of literature limits intellectual freedom. Making books and ideas unavailable based on their content or viewpoint or taking books out of schools because they are controversial, unpopular, or offensive, may violate the First Amendment. *See, e.g., Bd. of Educ. v. Pico*, 457 U.S. 853 (1982). Courts view school libraries as the main place where students exercise their freedom “to inquire, to study and to evaluate, to gain new maturity and understanding.” *Id.* at 868.

Student Publications: Schools may review and control the content of school sponsored student publications including student newspapers, yearbooks, literary magazines, on-campus videos, and radio broadcasts. But schools cannot control student publications that are not sponsored or funded by the school, not done as part of a class or school project, or that are done on a student’s own time with their own

resources. *See, e.g., Burt v. Barker*, 861 F.2d 1149 (9th Cir. 1988); *Fujishima v. Bd. of Ed.*, 160 F.2d 1355 (7th Cir. 1972); *Eisner v. Stanford Bd. of Ed.*, 440 F.2d 803 (2d Cir. 1971).

RELIGIOUS BELIEFS AND ACCOMMODATIONS

Free Exercise Clause: Under the First Amendment’s Free Exercise Clause, students have the right to worship as they see fit, with only limited restrictions. This means that while at school, students are free to practice their religion or nonreligion and to express themselves religiously without interference by school officials. Students may, for example, wear religious attire or clothing with religious messaging to school; post religious messages or images on their lockers; or bring religious materials, including religious texts or objects, to school. School officials may not, for instance, require students to remove their hijab, yarmulke, or other head covering, as it substantially burdens the practice of the student’s religion. *See, e.g., Va. Code § 22.1-203.1 et seq.*; VIRGINIA STATE BOARD OF EDUCATION, GUIDELINES CONCERNING RELIGIOUS ACTIVITY IN THE PUBLIC SCHOOLS (1995).

Establishment Clause: Under the First Amendment’s Establishment Clause, school officials cannot favor one religion over another or favor religion over nonbelief. In practice, this means that school officials and teachers cannot conduct prayer or bible-reading sessions, organize or participate in student-led prayer, or hold a prayer at graduation or sporting events, even when participation is voluntary. *See, e.g., Abington Sch. Dist. v. Schempp*, 374 U.S. 203 (1963); *Engel v. Vitale*, 370 U.S. 421 (1962); *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 308 (2000); *Lee v. Weisman*, 505 U.S. 577 (1992). Teachers cannot lead students in devotional activities or encourage student participation in religious activity before or after school, during class, or at school-sponsored activities. In fact, in the public-school context, the Supreme Court has invalidated almost every instance of school- or teacher-sponsored religious expression. Under Virginia law, school boards are permitted to establish a daily observance of one minute of silence, but the school board must be careful to ensure that its policy has secular justifications and is not merely a pretense to encourage prayer. *See, e.g., Va. Code § 22.1-203*; VIRGINIA STATE BOARD OF EDUCATION, GUIDELINES CONCERNING RELIGIOUS ACTIVITY IN THE PUBLIC SCHOOLS (1995).

RIGHTS OF LGBTQ STUDENTS

Cultivating a Safe Environment: Bullying of lesbian, gay, bisexual, transgender, and queer (“LGBTQ”) students has been documented as pervasive at many schools and is all too often ignored, or even encouraged, by school officials. LGBTQ students have a right to live their authentic lives and express themselves at school. Students have a right to be out of the closet at school, and conversely, public schools are not allowed to “out” students publicly. School officials and administrators must ensure they are creating a safe learning environment and protecting LGBTQ students from bullying and harassment. *See, e.g., Title IX, 20 U.S.C. § 1681* (schools may be liable if they act with deliberate indifference in failing to protect students from severe harassment on the basis of sex).

Restrooms & Locker Rooms: Transgender students must be allowed to use the restroom facilities consistent with their gender identity. Schools cannot create policies that require transgender students to use restrooms or locker rooms that do not correspond with their gender identity, and schools may not create policies that



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require transgender students to use single-user facilities. *See Grimm v. Gloucester County Sch. Bd.*, Civil No. 4:15-cv-52, 2019 U.S. Dist. Lexis 138246 (E.D. Va. Aug. 9, 2019).

Dress Code: School officials cannot force students to wear clothing inconsistent with their gender identity. Public schools may have dress codes, but dress codes cannot treat students differently based on their gender, force students to conform to sex stereotypes, or censor particular viewpoints. Schools cannot enact dress codes based on the stereotype that only girls can wear some types of clothes and only boys wear other types of clothes. *See, e.g., U.S. v. Virginia*, 518 U.S. 515, 533 (1996) (government actors must not treat male and female students differently because of “overbroad generalizations about the different talents, capacities, or preferences of males and females.”). Schools may, for example, require that skirts be a certain length; however, they cannot require that some students wear skirts and prohibit others from doing so based on the student’s sex or gender expression. This also applies to pants, ties, or other clothing associated with traditional gender roles. And it applies to attire requirements for homecoming, prom, graduation, and other special school events.

Discipline: The intimate relationships of LGBTQ students must be treated with equal dignity as those of heterosexual students. Policies that prohibit same-sex couples or dates from attending prom, homecoming, or other dance functions violates students’ rights under Title IX of the Education Amendments of 1972, the Equal Protection Clause of the U.S. Constitution, and the Bill of Rights of the Virginia Constitution. LGBTQ students should not be punished more severely than heterosexual students for similar behavior, including for displays of affection.

LGBTQ Student Organizations: Students interested in forming a student organization, typically called a gay-straight alliance (“GSA”), are to be treated the same as students forming any other noncurricular organization or club. *See, e.g., 20 U.S.C. § 4071(a)* (if a school allows any noncurricular student group to meet, it cannot deny other groups the same access based on the content of their interest); *Gay All. of Students v. Matthews*, 544 F.2d 162 (4th Cir. 1976).

Gender Markers, Pronouns, and Student Records: Students should be addressed using their preferred names and pronouns. Refusing to do so, or refusing to update the gender markers on a student’s records when provided with appropriate documentation, may be considered a form of sex-based discrimination under federal law. *See Grimm v. Gloucester County Sch. Bd.*, Civil No. 4:15-cv-52, 2019 U.S. Dist. Lexis 138246 (E.D. Va. Aug. 9, 2019). Likewise, a student’s right to privacy includes a student’s sexual orientation or gender identity. It is against the law for school officials to disclose or compel students to disclose this information, even if the student appears open about their sexual orientation or gender identity. *See C.N. v. Wolf*, 410 F. Supp. 2d 894, 903 (C.D. Cal. 2005).

DISCIPLINE AND ARRESTS

Generally: School discipline policies and practices should be fair and equitable and should prioritize prevention and intervention rather than harsh punishments like suspension, expulsion, and referral to law enforcement. The goal of discipline should



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be to teach appropriate behaviors and minimize the time students spend out of class. In Spring 2015, the Center for Public Integrity released a study finding that Virginia led the country in schools referring students to law enforcement, a phenomenon known as the “school-to-prison pipeline.” Additional studies conducted by the Virginia Department of Education found that African American students and students with disabilities were disproportionately represented in both suspensions and referrals to law enforcement throughout Virginia schools. These disparities open up school districts to potential legal challenges for race and disability discrimination under federal civil rights laws. *See, e.g.*, Complaint against Richmond Public Schools, available at <https://acluva.org/en/cases/equal-treatment-richmond-public-school-students>. In order to avoid potential legal problems, and to provide a more equitable school environment, school officials should reevaluate and revise their current discipline policies and practices to create a more positive and preventative approach to student conduct. The Virginia Board of Education has provided a blueprint for schools to use in revising their outdated practices – the Model Guidance for Positive, Preventative Code of Student Conduct Policy and Alternatives to Suspension, available at http://www.doe.virginia.gov/support/student_conduct/index.shtml.

Due Process: The U.S. Constitution requires that students receive due process before disciplinary measures are imposed. This means that school officials must follow certain procedures before they can suspend or expel students from school. Students are generally entitled to receive notice prior to any suspension or expulsion. The notice must include the facts concerning the suspension or expulsion, and the basis for any accusations. The notice must also provide students an opportunity to explain their side. *See, e.g., Goss v. Lopez*, 419 U.S. 565 (1975). For Virginia’s specific procedural requirements, see Va. Code § 22.1-276.01 *et seq.*

Corporal Punishment: Corporal or physical punishment of students is strictly prohibited by Virginia law. *See* Va. Code § 22.1-279.1.

School Resource Officers: School Resource Officers (“SROs”) can protect students from outside danger, but often punish minor behaviors through ticketing and arrests. Law enforcement intervention should typically be a last resort for minor violations best handled by schools as discipline issues. For additional resources on how to limit disproportionate school-based arrests or referrals to law enforcement, visit the Model Guidance for Positive, Preventative Code of Student Conduct Policy and Alternatives to Suspension, available at http://www.doe.virginia.gov/support/student_conduct/index.shtml.

RIGHTS OF STUDENTS WITH DISABILITIES

Students with disabilities are provided legal protections under several federal laws. The Individuals with Disabilities Education Act (“IDEA”) requires that public schools provide eligible students with disabilities a “free, appropriate public education” in the least restrictive environment. *See* 20 U.S.C. § 1400 *et seq.* As part



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of the IDEA, schools must affirmatively locate, identify, and evaluate children in their district for special education and related services, a process known as “child find.” Parents may also request an evaluation at any time in writing or by speaking to a teacher or administrator, and the school district must respond to the parent’s request. Schools must educate students with disabilities in the least restrictive setting possible, with an emphasis on inclusion and integration in the regular education classroom where feasible. Additionally, students receiving special education services under the IDEA, as well as students suspected of being eligible to receive services, are entitled to certain protections and safeguards in the school discipline process. *See* 34 C.F.R. § 300.530 *et seq.*

Students with disabilities are also provided with protections under Section 504 of the Rehabilitation Act of 1974 (“Section 504”) and Title II of the Americans with Disabilities Act (“ADA”). Section 504 and the ADA prohibit discrimination against students with disabilities. This means that schools are prohibited by federal law from denying students with disabilities equal access to academic courses, field trips, extracurricular activities, school technology, and health services. School officials also have a duty to ensure that students with disabilities are not being discriminated against by being denied necessary accommodations. Restricting access to educational activities and opportunities, ignoring harassment and bullying, and failing to train staff on compliance with these laws is also prohibited under Section 504 and the ADA. *See also* Va. Code § 22.1-213 *et seq.*

RIGHTS OF IMMIGRANT STUDENTS

Schools cannot discriminate against students on the basis of race, color, or national origin. This includes discriminating against students on the basis of their immigration status. Undocumented students have a right to a free public education in your school district regardless of their immigration status, and schools cannot deny students of this right. *See, e.g., Plyler v. Doe*, 457 U.S. 202 (1982). Likewise, schools are not permitted to deny enrollment to a student based on their undocumented status; treat a student differently to determine residency; make inquiries of students or parents that may expose their undocumented status; require social security numbers from parents or students for purposes of enrollment; or engage in any other practices which may chill the right of access to school. Schools cannot turn away students with limited English proficiency; they must be provided with language instruction. *See, e.g., Lau v. Nichols*, 414 U.S. 563 (1974).

School officials should not allow immigration enforcement actions on school grounds without a judicial warrant based on probable cause that a criminal violation of the immigration laws has occurred. Schools should not call immigration authorities on students or consent to any immigration enforcement on school grounds without a criminal warrant. There is no state law requiring any state or local official to contact immigration officials nor any state or federal law prohibiting adoption of a policy that protects students and teachers from immigration action in the absence of a judicial criminal warrant.

RIGHTS OF PREGNANT STUDENTS

Schools are prohibited from excluding pregnant students and students with children under Title IX of the Education Amendments of 1972. This means that schools must also ensure that pregnant students or students with children have access to educational instruction, school activities, and reasonable accommodations, to the same extent that students with temporary medical conditions are given access,

including the ability to make up missed classwork and learn in a safe, nonjudgmental environment. Schools are also not allowed to punish students who choose to terminate a pregnancy or to reveal a student's private medical information.

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