



August 21, 2023

VIA ONLINE PORTAL

Douglas Hibbard
Chief, Initial Request Staff
Office of Information Policy
United States Department of Justice
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VIA ELECTRONIC MAIL

Melody Diegor Caprio
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VIA ELECTRONIC MAIL

Kilian B. Kagle, Chief
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Civil Rights Division
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950 Pennsylvania Ave., NW
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Freedom of Information Act Request: Roanoke County School Board

Dear Mr. Hibbard, Mr. Kagle, and Ms. Caprio:

America First Legal Foundation is a national, nonprofit organization working to promote the rule of law in the United States, prevent executive overreach, and ensure due process and equal protection for all Americans, all to promote public knowledge and understanding of the law and individual rights guaranteed under the Constitution and laws of the United States. To that end, we file Freedom of Information Act (FOIA) requests on issues of pressing public concern, then disseminate the information we obtain, making documents broadly available to the public, scholars, and the media. Using our editorial skills to turn raw materials into distinct work, we distribute that work to a national audience through traditional and social media platforms. AFL's Twitter page has over 176,000 followers, and the Twitter page of our Founder and President has over 497,000 followers.

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I. Background

On July 27, 2023, the Roanoke County School Board in Virginia held its monthly meeting and listed on its agenda as an Information Item discussion of the newly released Virginia Department of Education’s “Model Policies on Ensuring Privacy, Dignity, and Respect for All Students and Parents in Virginia’s Public Schools.”¹ Those policies, released on July 18, 2023,² are required to be adopted by local school districts under VA Code § 22.1-23.3.³

The Virginia Department of Education’s 2023 Model Policies

By way of background, the critical provisions of that policy are as follows:

- Students shall not be compelled to participate in any counseling program without parental consent.

Each school shall make reasonably available, with available resources, guidance and counseling services to all students as provided in [8 VAC 20-620-10](#) and pursuant to parental notification requirements therein, including that, “[n]o student shall be required to participate in any counseling program to which the student’s parents object.” Except with regard to eligible students, parents must be informed and given an opportunity to object before counseling services pertaining to gender are given.

- Schools must inform parents of any bullying incidents involving their child within 24 hours of learning of the allegation of bullying.

[School Division] provides bullying prevention education in accordance with *Code of Virginia* § [22.1-208.01](#).

Any incident or complaint of discrimination, harassment, or bullying shall be given prompt attention, including investigating the incident and taking appropriate corrective and/or disciplinary action, by the school administrator.

Bullying of any student by another student, for any reason, cannot be tolerated in our schools. Intervening immediately to stop bullying on the spot can help ensure a safer school environment for all students.

The [School Division’s Designated Contact] shall be available to hear concerns from students and parents when complaints are not resolved at the school level.

The [School District] shall inform parents of any bullying incidents that involve their child within 24 hours of learning of the allegation of bullying, per the requirements of *Code of Virginia* § [22.1-279.6\(D\)](#).

¹ ROANOKE COUNTY PUBLIC SCHOOLS, *Thursday, July 27, 2023, Agenda*, (Jul. 27, 2023), <https://bit.ly/3OvZGAs>.

² VIRGINIA DEPARTMENT OF EDUCATION, *Model Policies on Ensuring Privacy, Dignity, and Respect For All Students and Parents In Virginia’s Public Schools*, (Jul. 18, 2023), <https://bit.ly/3QyKkVw>.

³ See VA Code Ann. § 22.1-23.3 (2023).

- Schools may only change the legal name and sex of a student if a parent submits a legal document substantiating a change of legal name or sex.

[School Division] is required to maintain an official record for each student that includes the student's legal name and sex. [School Division] may be required to use or report a student's legal name or sex in some situations.

[School Division] shall change the legal name or sex in a student or former student's official record only if a parent or eligible student submits a legal document, such as a birth certificate, state- or federal-issued identification, passport, or court order substantiating the student or former student's change of legal name or sex.

- School staff shall refer to a student by the name that appears in official student records and the pronouns that correspond to the student's sex as it appears in his or her official student record. Staff shall refer to the student by a pronoun that does not correspond to the student's sex as it appears in his or her official records only if the student's parents have submitted a written request. Still, staff and other students shall not be compelled to refer to students in a manner that would violate their constitutionally protected rights.

[School Division] personnel shall refer to each student using only (i) the name that appears in the student's official record, or (ii) if the student prefers, using any nickname commonly associated with the name that appears in the student's official record. Nothing in this policy shall prevent [School Division] personnel from using a different name for a student when it is necessary for the student's academic instruction, such as using a name more common in a foreign country while in a foreign-language course.

[School Division] personnel shall refer to each student using only the pronouns appropriate to the sex appearing in the student's official record - that is, male pronouns for a student whose sex is male, and female pronouns for a student whose sex is female.

Notwithstanding the provisions of paragraphs (2) and (3) of this section, [School Division] personnel shall refer to a student by a name other than one in the student's official record, or by pronouns other than those appropriate to the sex appearing in the student's official record, only if an eligible student or a student's parent has instructed [School Division] in writing that such other name or other pronouns be used.

Notwithstanding the provisions of paragraph (4) of this section, [School Division] shall not compel [School Division] personnel or other students to address or refer to students in any manner that would violate their constitutionally protected rights.

- Schools shall disclose sensitive student information (including any survey or evaluation related to the students' gender) only to the student, the students' parents, and school personnel with a legitimate educational interest, and when required by law.

[School Division] shall disclose sensitive student information (including any survey or evaluation related to the student's gender) only (i) to the student, the student's parents (except in the case of eligible students), and school personnel with a legitimate educational interest, or (ii) when required by law.

- For school programs, events, and activities that are segregated based on sex, the appropriate participation of students shall be based on sex rather than gender or gender identity.

For any school program, event, or activity (including extracurricular activities) that are separated by sex, the appropriate participation of students shall be determined by sex rather than gender or gender identity. [School Division] shall provide reasonable modifications to this policy only to the extent required by law.

- Overnight travel accommodations, locker rooms, and other intimate spaces shall be divided based on sex, subject to any reasonable modifications to the extent required by law.

Overnight travel accommodations, locker rooms, and other intimate spaces used for school-related activities and events shall be based on sex. [School Division] shall provide reasonable modifications to this policy only to the extent required by law.

- Students shall use the bathroom that corresponds to his or her sex, except where federal law requires otherwise.

Students shall use bathrooms that correspond to his or her sex, except to the extent that federal law otherwise requires. See *Grimm v. Gloucester County School Board*, 972 F.3d 586 (4th Cir. 2020).

- Students diagnosed with gender dysphoria made by a licensed health care provider must consult with his or her school's ADA coordinator regarding the requested service.

Students with a diagnosis of gender dysphoria made by a licensed health care provider should consult with their school's ADA coordinator regarding any requested services.

- Where athletic programs or activities are separated based on sex, participation of students shall be based on sex rather than gender or gender identity.

For any athletic program or activity that is separated by sex, the appropriate participation of students shall be determined by sex rather than gender or gender identity. [School Division] shall provide reasonable modifications to this policy only to the extent required by law.

The July 27, 2023, Roanoke County School Board Meeting

During the meeting, Roanoke County Schools Superintendent Ken Nicely presented the new model policies to the board.⁴ His presentation was repeatedly interrupted by transgender activists in the meeting room who were yelling profanities in an attempt to disrupt the meeting.⁵ Despite repeated warnings from the school board chair, the activists continued their disruptive behavior until the chair asked the audience to leave the room so that the board could continue its business.⁶ While most peacefully left, a woman named Shannon Clawson refused to leave, repeatedly chanted “Protect trans kids,” and was arrested as several other activists joined the chant and surrounded the police officer escorting Clawson from the room. A second individual was later arrested after confronting the school board chairman.⁷

The issues related to this disruption are now being appropriately handled by local law enforcement and the Roanoke County School Board. Nevertheless, as reported by investigative reporter Luke Rosiak in the Daily Wire, the Department of Justice has once more sought to wield federal authority in an area where it has none - local school board meetings.⁸

To that end, on July 31, 2023, Hannah Levine of the Department of Justice’s Community Relations Service sent an email to Roanoke County Public Schools, stating: “CRS is aware of ongoing community tensions in Roanoke County following the release of the new model policies for transgender students. I’d like to connect to see if we might be able to offer support and services as you work to manage conflict with the community related to this.”⁹

It is unclear why CRS would inject itself into an issue that is properly one for the Commonwealth of Virginia and Roanoke County Public Schools. What is clear, however, is that CRS has positioned itself not as a neutral arbitrator of issues related

⁴ Pasty Montesinos, *Two Arrested During Roanoke County School Board Meeting Discussing Controversial Policies*, WDBJ, (Jul. 27, 2023), <https://bit.ly/3DMUTwB>.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ Luke Rosiak, *Biden Admin Cites ‘Community Tensions’ as Mandate To ‘Mediate’ School District’s Adoption Of Youngkin’s Trans Policies*, THE DAILY WIRE, (Aug. 8, 2023), <https://bit.ly/3YBTkLp>.

⁹ Email from Hannah Levine, The Department of Justice, (Jul. 31, 2023), (available at <https://adobe.ly/3DSy3U6>).

to transgenders but as a government entity that is fully behind the Biden Administration's radical transgender agenda.¹⁰

Further, the Department of Justice has already shown itself to be hostile to parental rights and the rights of biological girls to use sex-segregated bathrooms and compete in sex-segregated sports,¹¹ which these model policies seek to vindicate. As you recall, the Attorney General issued a memo in October of 2021 asking the FBI and U.S. Attorneys to utilize federal resources and power to investigate parents for speaking at school board meetings. This was done in coordination with the National School Board Association, in part as an effort to help put a thumb on the scale for the Democrat nominee for governor, Terry McAuliffe, whose campaign was favorable to the transgender agenda and antagonistic to parental rights.¹²

Given the events related to the Roanoke County School Board meeting and the debate over the Virginia Department of Education's model policies, the Department of Justice's attempt to intervene in a non-federal matter, and recent attempts by the Department of Justice to oppose parental rights in the Commonwealth of Virginia, it is necessary for the public to understand the genesis of the Department's interest in Roanoke County Public Schools and the Virginia Department of Education Model Policies, as well as the motivations for the Department of Justice to intervene in a clearly local matter.

II. Requested Records

Under 5 U.S.C. § 552(a), AFL requests the following records.

- A. Records of all communications, from July 18, 2023, to the date that this request is processed, with the term "Roanoke" and/or "model policies."
- B. All emails, from July 18, 2023, to the date that this request is processed, to or from any account ending in "@rcps.us."
- C. All records regarding the processing of the above items.

¹⁰ Rosiak, *supra* note 8.

¹¹ Press Release, The White House, "FACT SHEET: Biden-Harris Administration Advances Equality and Visibility for Transgender Americans," (Mar. 31, 2023), <https://bit.ly/3DQwA0F>.

¹² See generally STAFF OF H. COMM. ON THE JUD., SELECT SUBCOMM. ON THE WEAPONIZATION OF THE FED. GOV'T, & PERMANENT SELECT COMM. ON INTEL., 118th Cong., A "Manufactured" Issue And "Misapplied" Priorities: Subpoenaed Documents Show No Legitimate Basis For The Attorney General's Anti-Parent Memo, (Mar. 21, 2023), <https://bit.ly/3OR6q4c>.

III. Custodians

For Mr. Hibbard

- All political appointees and career employees with a grade equivalent of GS-15 in the:
 - A. Office of the Attorney General
 - B. Office of the Associate Attorney General

For Mr. Kagle

- All political appointees and career employees with a grade equivalent of GS-15 in the Civil Rights Division.

For Ms. Caprio

- Amy Condra
- Hannah Levine
- All political appointees and career employees with a grade equivalent of GS-15 in Community Relations Service.

IV. Processing and Production

Per 5 U.S.C. § 552(a)(4)(A)(iii) and 28 CFR § 16.10, AFL requests a waiver of all search and duplication fees. AFL broadly disseminates information to the public regarding the operations and activities of the federal government, and numerous federal agencies, including the Department of Justice, have routinely granted our fee waiver requests. All records received will be posted on our website and made freely available to the public, and this request is not primarily in our commercial interest.

Processing should strictly comply with the processing guidance in the Attorney General's Memorandum on Freedom of Information Act Guidelines.¹³ If you have any questions about our request or believe further discussions regarding search and processing would facilitate the more efficient production of requested records, please get in touch with me at FOIA@aflegal.org. If AFL's request for a fee waiver is not granted in full, please get in touch with us immediately upon making that determination.

¹³ U.S. DEPT JUST. (Mar. 15, 2022), <https://bit.ly/3zvpxb6>.

To accelerate your release of responsive records, AFL welcomes production on an agreed rolling basis. Please provide responsive records in an electronic format by email. Alternatively, please provide responsive records in native or PDF format on a USB drive to America First Legal Foundation, 611 Pennsylvania Ave SE #231, Washington, DC 20003.

Thank you in advance for your cooperation.

Sincerely,

/s/ Ian D. Prior

America First Legal Foundation