

VIRGINIA:

IN THE CIRCUIT COURT FOR THE COUNTY OF ROCKINGHAM

DEBORAH FIGLIOLA, KRISTINE
MARSH, TIMOTHY AND LAURA
NELSON AND JOHN AND NICOLETTE
STEPHENS,

Plaintiffs,

v.

Case No. CL22-1304

THE SCHOOL BOARD OF THE CITY OF
HARRISONBURG, VIRGINIA AND
MICHAEL G. RICHARDS,

Defendants.

DECLARATION OF DR. MICHAEL RICHARDS

On this 27th day of September, 2022, I, Michael Richards, Ed.D., being first duly sworn,
do hereby certify:

1. I am over the age of eighteen and have personal knowledge of the facts set forth
below, and I am competent to testify.

2. This Affidavit fairly and accurately sets forth information within my personal
knowledge and is true and accurate to the best of my recollection.

3. I am currently employed as the Superintendent of Harrisonburg City Public
Schools ("HCPS"). I have held this position since May 1, 2019. I have worked as an
administrator for HCPS, as well as other school divisions, since 2011. I have worked as an
educator for more than 20 years in public education.

4. The Harrisonburg City School Board ("the School Board") maintains a Policy
Manual that expressly states the Policies that govern its activities, its relationships with students
and employees, and its interactions with and obligations to the public.

5. On August 17, 2021, the School Board revised Policy 401 (the “Nondiscrimination Policy”), which guarantees equal educational opportunities and a nondiscriminatory environment to all HCPS students. Specifically, the School Board added “gender identity” to the list of expressly protected characteristics.

6. The School Board revised the Nondiscrimination Policy in compliance with applicable law. See Section 400, Policy 401.

7. The School Board has taken no further action to adopt policies regarding the treatment of transgender students.

8. At its core, the School Board’s action in adding “gender identity” as a characteristic protected by Policy 401 was informed by the fundamental objective that every child be treated with both dignity and respect, and that they be cared for by their school community in a healthy and safe environment.

9. To assist faculty and staff in meeting this objective as to transgender, nonbinary, and gender-nonconforming students, the HCPS administration developed a team-based process for responding to the needs of these students and their families. My office also provided guidelines for best practices to faculty and staff on which they may rely in building these relationships. Neither the team-based process nor these best-practices guidelines have been adopted as Policies of the School Board.

10. The team-based approach allows our staff to support the unique needs of the student, their families, and others on a case-by-case basis.

11. We intend the team-based process to function as follows: First, student requests to use a different pronoun or name are to be referred to a school counselor. The school counselor then works with the student and ultimately convenes a team consisting of school staff and

administration, the student's family, and other school partners, including a mental health team, as needed and on a case-by-case basis, to support the student. Generally, the mental health team will consist of the following: a mental health counselor, the school counselor, a social worker, a behavioral health specialist, the student's parents, and a member of the administration. These professionals work with the student and the student's family to promote a healthy and safe learning environment for the student.

12. The school counselor is integral to this process. As a part of the privacy and respect afforded to specific student matters, we believe it is most appropriate for the school counselor to lead the communication with students and families. School counselors are trained to assist students and their families in navigating any number of personal issues. They will work with school staff to ensure a safe and supportive environment while also empowering students to communicate with and rely on their parents. School counselors also serve as a single point of contact for students and their families, to ensure each student's safety and support needs are being met within the school system. By not having a one-size-fits-all approach, we believe the team of school staff and professionals can develop a case-by-case response that best furthers our priority of supporting all students.

13. Empowering a student to engage with his or her family regarding their gender identity is a priority of the team-based process. School counselors may use the optional HCPS Gender Transition Action Plan to guide that conversation and identify the student's desired next steps. Compl. Ex. 4. The first section of this document, after collecting the student's identifying information, focuses on the involvement of the student's parent or guardian. *Id.* at 2. Moreover, of the five action items expressly identified on the plan, two focus on "[i]nforming important relationships" and "[e]mpowering family relationships." *Id.* at 3. Rather than encouraging

students to conceal information from their families, school counselors focus their conversations with students on engaging with and involving their families.

14. HCPS relies on data from the Virginia Department of Education regarding the potential for severely detrimental impacts to a person following the involuntary disclosure of this type of deeply personal information. We also rely on data indicating that family involvement leads to better outcomes.

15. Consistent with our practices involving cisgender students who may go by a nickname or name other than their legal name, we continue to use a minor student's legal name on all official school documentation, until otherwise authorized by the parents.

16. Any internal forms related to the team-based process for responding to a student's gender status—including the HCPS Gender Transition Action Plan, should one be completed—is subject to a parent or guardian's request for records under the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g and 34 C.F.R. Part 99.

17. Although a mental health counselor is a member of the mental health team that responds to a student's disclosure of being transgender, gender questioning, nonbinary, or gender nonconforming, mental health counseling can only be provided to a student with parental permission.

18. After the School Board revised the Nondiscrimination Policy in August 2021 to include gender identity as a protected class, my office undertook to provide best-practices guidance to faculty and staff related to supporting transgender and nonbinary students. The intent of this guidance was to increase awareness among our faculty and staff of issues they might have to address. This guidance was also designed in light of statistics—obtained from the Virginia Department of Education and other sources—showing the dramatic positive effect that

providing an affirming, supportive environment can have on the health and safety of transgender students, including on rates of depression and attempted suicides.

19. The guidance provided to faculty and staff included the Supporting Our Transgender Students Presentation (“SOTS Presentation”). Compl. Ex. 3. The SOTS Presentation, which was informed by the 2021 VDOE Model Policy, was first given to school administrators and student support teams, who then shared it with the staff in their schools. The SOTS Presentation was not a training mandated by the Division, in contrast to trainings such as those on Title IX or Mental Health Awareness. The information outlined in the SOTS Presentation was not presented as mandatory for all faculty and staff. The SOTS Presentation did not say that faculty and staff would be subject to discipline by the Division or the School Board for noncompliance with the information contained therein. No reference was made to discipline in the SOTS Presentation.

20. The Division also offered guidance in the form of a professional development program entitled “Supporting LGBTQ+ Youth.” Compl. Ex. 7. The program was presented by the organization Side by Side. Approximately 75 of HCPS’s approximately 1200 employees participated in this professional development program. The intent of offering this program through a third-party was to provide another resource for administrators and student services staff in building relationships with LGBTQ+ students. The information presented by Side by Side was not presented as mandatory or subject to discipline by the Division or the School Board. No reference was made to discipline in the “Supporting LGBTQ+ Youth” Presentation.

21. My staff also made a presentation to the School Board in October 2019 entitled “Supporting ALL Students – October Bullying Prevention Highlights” (the “October Bullying Presentation”). Compl. Ex. 6. The information contained in the October Bullying Presentation

was largely duplicative of the SOTS Presentation. The October Bullying Presentation was not presented as mandatory or subject to discipline by the Division or the School Board. No reference was made to discipline in the October Bullying Presentation.

22. The intent of the guidance provided to faculty and staff members was to provide suggestions as to best practices for building relationships with transgender and nonbinary students. Faculty and staff members were also intended to receive background on the team-based process the Division intended to use in responding to the individualized needs of these students.

23. The Division has not threatened discipline of teachers and other staff members for not following the best-practices guidance. The guidance does not mention discipline of teachers and other staff members. My office has not, in fact, disciplined any employee related to the School Board's August 2021 revision of the Nondiscrimination Policy or its best practices guidance.

24. The School Board prioritizes facilitating communication between faculty and staff members and the School Board and its administrative staff. It has formalized this concern through the adoption of Policy 103 (formerly part of Policy 604). The School Board encourages employees to bring any concerns forward to the Superintendent so that the Division can solve problems collaboratively with its staff. Specifically, "[e]mployees are encouraged to communicate their ideas and concerns in an orderly and constructive manner to the School Board and/or the Superintendent..." Moreover, "[t]he School Board desires to develop and maintain the best possible working relationship with the employees of the school division. The School Board welcomes the viewpoints of employees, and allows time at its meetings for employees to be heard." *Id.*

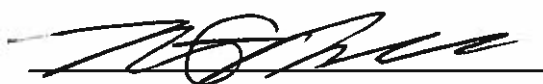
25. My office has implemented Policy 103 through a system in which employees are encouraged to bring concerns to the administration of his or her school, or directly to my office so that potential issue may be addressed before a conflict develops.

26. I am aware of one current employee of HCPS who has expressed concerns during the 2021-2022 school year about the Division's approach to transgender, nonbinary, and gender questioning students. That employee stated that the employee would not "lie" to parents about the names and pronouns a child used at school. My staff spoke to this teacher and clarified that the teacher was expected to answer truthfully and under no circumstances was a teacher expected to lie to a parent. This teacher was not threatened with discipline of any type. In the 2022-2023 school year, I met with a Harrisonburg Education Association representative who stated an employee came to him with concerns about being asked to "lie" to parents under the Division's best-practice guidance. I reaffirmed the Division's position with the representative that employees are not to lie to parents and asked that this be communicated to the employee.

27. My office has not disciplined any faculty or staff member related to the use (or non-use) of a student's preferred name or pronouns.

28. None of the three Plaintiffs in this action have complained to my office that the Nondiscrimination Policy, the team-based process, or the best practices guidance violates their religious convictions or rights.

Pursuant to Virginia Code § 8.01-4.3, I declare under penalty of perjury that the foregoing statements are true and correct to the best of my knowledge.



Michael Richards, Ed.D.