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*Submitted via townhall.virginia.gov*

President Daniel A. Gecker  
Board of Education  
Virginia Department of Education  
PO Box 2120  
Richmond, VA 23218

**RE: 39 Gender Justice and Survivor Advocacy Organizations Oppose Proposed 2022 Model Policies Requiring Discrimination Against Transgender Children**

To Whom It May Concern,

The National Women’s Law Center (NWLC),<sup>1</sup> joined by thirty-nine (39) gender justice and civil rights organizations, submits this comment on the Virginia 2022 model policies on “privacy, dignity, and respect for all students and parents” in Virginia’s Public Schools. As advocates for gender justice, survivors of sexual assault, and civil rights, we recognize that attempts to punish LGBTQI+ youth for existing cannot be separated from rules attempting to enforce sexist stereotypes and police the bodies of all girls and young women, especially transgender girls, queer girls, and Black and brown girls.

We condemn these proposed model policies in the strongest terms, as they single out one group of students for surveillance, censorship, and second-class privacy rights through government enforcement of sex stereotypes. The proposed model policies would displace the 2021 model policies that the Virginia Department of Education (VDOE) drafted with input from over 9,000 commenters; the 2021 policies affirmed the rights of transgender and nonbinary students to participate in school

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<sup>1</sup> NWLC fights for gender justice—in the courts, in public policy, and in our society—working across the issues that are central to the lives of women and girls. We use the law in all its forms to change culture and drive solutions to the gender inequity that shapes our society and to break down the barriers that harm all of us—especially those who face multiple forms of discrimination, including women of color, LGBTQI+ people, and low-income women and families. NWLC has participated in every major Title IX case before the Supreme Court as either counsel or *amicus*, and routinely submits *amicus* briefs in support of transgender students who experience sex discrimination. We believe that ending all forms of sex-based discrimination and harassment is crucial to protecting the opportunities of all students in education and for the rest of their lives.

programming, access gender-separated school facilities, and be referred to by the correct names and pronouns.

By contrast, even where these proposed 2022 model policies contemplate schools (conditionally) recognizing the existence of transgender students, the guidelines seem designed to play down and obscure rights clearly protected under federal law; to assert limits to those rights that have no basis in either law or youth well-being; to prohibit school staff from showing basic courtesy and respect to all students in classrooms; and to require discredited practices that target individual students and have been shown to harm young people. Schools, students, and families will be confused or misled about the clear legal authorities binding Virginia schools, and schools that adopt these policies will expose themselves to legal liability. It is clear these dehumanizing model policies were written to sacrifice the wellbeing of vulnerable students based on a bare desire to harm a politically unpopular group.

### **The proposed model policies require unlawful discrimination against LGBTQI+ students**

By newly requiring written instruction from a student's parent in order for school employees to use that student's correct name and pronouns, the proposed policies would force many Virginia schools to entirely condition basic respect, dignity, and support for transgender, nonbinary, and gender nonconforming youth upon signed notes from home. Yet these youth do not need a permission slip to earn the same fundamental dignity as their peers—no student does.

Every student deserves to learn in a safe, respectful school environment. One aspect of this is the common courtesy of referring to people with the names and other terms they prefer. For example, if someone has said, "I find that name offensive, please do not call me that," it is patently disrespectful to intentionally, repeatedly use the name you know to be offensive. These model policies single out transgender, nonbinary, and gender nonconforming youth for this exact exclusion from basic respect. It is inappropriate and unnecessary for a public education system to defer to individual families on how students are spoken to in class, or which conduct rules apply to specific students, only in the context of respecting transgender and nonbinary students. It would be clearly unacceptable for a school to require parental permission notes before a student could sit with others of a different race or gender at lunch. It is equally wrong to single out transgender and nonbinary students for targeted surveillance and restrictions.

When gender expansive youth get to simply be their true selves, they can access the same joy, curiosity, imagination, and potential for growth that all students need and deserve. Research shows that when transgender youth are affirmed with the

correct names and pronouns, there is a large and positive difference in their mental health—whereas intentional and repeated misgendering and deadnaming is intensely harmful.<sup>2</sup> It will cause deep harm to many students' wellbeing if Virginia codifies model policies that create barriers for a transgender or nonbinary student seeking to use the correct names or pronouns at school, or to access school programs and facilities.

The proposed policies repeatedly insinuate a tension between “accommodating” transgender students and “the rights and needs of other students and of school staff.” This is present even in the model policies' introductory statement of purpose, which links addressing “the treatment of transgender students” to Virginia’s “efforts to protect... *all* students”—subtly framing the very existence of transgender students as harmful to others.

There is no tension between full inclusion of transgender students in school life and the rights of any other person. Our civil rights legal framework does not encompass any “right” for the state to coerce students into conforming to sex stereotypes so that anti-trans adults can pretend transgender students do not exist. To the contrary, courts have recognized that school policies singling out transgender girls and other gender diverse students for segregation from classmates create greater risks of discriminatory harassment and violence, and may create a climate so hostile these students are unable to succeed and pushed out of school entirely, in violation of federal law.<sup>3</sup>

### **The proposed model policies appear designed to violate the Constitution and federal law and to expose school districts to legal liability**

By implementing the model policies, Virginia schools would violate both the Constitution and Title IX. This would lead to costly litigation, and also risk the federal funding of every Virginia school district where the model policies are adopted. 50 years ago, Congress enacted Title IX to prohibit all forms of sex-based discrimination in federally funded education programs and activities.<sup>4</sup> For decades, courts have affirmed that discrimination on the basis of gender identity and transgender status is a form of

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<sup>2</sup> See, e.g., The Trevor Project, “Acceptance of Transgender and Nonbinary Youth from Adults and Peers Associated with Significantly Lower Rates of Attempting Suicide,” Nov. 3, 2021, available at <https://www.thetrevorproject.org/blog/acceptance-of-transgender-and-nonbinary-youth-from-adults-and-peers-associated-with-significantly-lower-rates-of-attempting-suicide/> (peer reviewed study of 8,000 transgender and nonbinary youth finding that higher levels of support and acceptance can protect against negative mental health outcomes, including suicide attempts).

<sup>3</sup> *Adams by and through Kasper v. School Bd. of St. Johns Cnty.*, 968 F.3d 1286, 1296 (11th Cir 2020) (applying *Bostock*, the Eleventh Circuit held that a policy restricting bathroom use based on students' “biological sex” in effect “singles out transgender students for differential treatment *because* they are transgender”) (emphasis in original); *Grimm v. Gloucester Cnty School Bd.*, 972 F.3d 586, 616–17 (4th Cir. 2020) (in finding that a policy that restricted bathroom use based on students' biological sex constituted impermissible sex discrimination under Title IX, the Fourth Circuit explained that a transgender boy explained “feeling stigmatized and isolated by having to use separate restroom facilities,” which resulted in him feeling “unbearable” stress while at school and in his inability to attend school events without fearing of being able to use the bathroom).

<sup>4</sup> 20 U.S.C. § 1681(a).

sex discrimination, including when it occurs in gender-separated education programs.<sup>5</sup> This includes federal court decisions finding that states do not have any valid interest in excluding transgender women and girls from education opportunities, solely because of who they are.<sup>6</sup> The U.S. Department of Education interprets and enforces Title IX consistent with these court rulings, and indeed is finalizing changes to its Title IX regulations reflecting these rulings.<sup>7</sup>

It is binding federal law in the Fourth Circuit, which includes Virginia, that Title IX prohibits discrimination against transgender students, and that policies singling out transgender students are subject to heightened scrutiny under the Constitution. Two years ago, in *Bostock v. Clayton County*, the Supreme Court explained that it is logically impossible to discriminate against a person for being transgender without treating them differently because of sex and sex stereotypes.<sup>8</sup> In *Grimm v. Gloucester County School Board*, the Fourth Circuit subsequently held that the Supreme Court's reasoning applies fully to Title IX, and therefore prohibits school policies that subject transgender students to harm throughout the school day through a classification relying on unspecified "biological" characteristics or administrative records inconsistent with the student's gender identity. The Fourth Circuit further held that such a policy is subject to heightened scrutiny under the Equal Protection Clause of the Constitution, whether considered as a classification based on transgender status or other sex-based characteristics.<sup>9</sup>

As is always true under federal civil rights laws such as Title IX, this right to be free from discrimination belongs to students; students do not need parental permission to not be discriminated against at school. Moreover, just as the Fourth Circuit held in *Grimm* that it was bound not only by *Bostock's* facts but its reasoning, the reasoning set forth in *Grimm* applies not only to the specific facts of that case but to other forms of discrimination that would be permitted or required under the proposed model policies.

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<sup>5</sup> See, e.g., *Schwenk v. Hartford*, 204 F.3d 1187, 1200-01 (9th Cir. 2000) (interpreting Gender Motivated Violence Act); *Whitaker By Whitaker v. Kenosha Unified Sch. Dist. No. 1 Bd. of Educ.*, 858 F.3d 1034, 1047 (7th Cir. 2017) (Title IX); *Evancho v. Pine-Richland Sch. Dist.*, 237 F. Supp. 3d 267, 288 (W.D. Pa. 2017); *M.A.B. v. Bd. of Educ. of Talbot Cnty.*, 286 F. Supp. 3d 704, 719 (D. Md. 2018) (Title IX). See also *Parents for Privacy v. Barr*, 949 F.3d 1210, 1239-40 (9th Cir. 2020) (Title IX); *Doe by & through Doe v. Boyertown Area Sch. Dist.*, 897 F.3d 518, 535 (3d Cir. 2018) (Title IX).

<sup>6</sup> *Hecox v. Little*, 479 F. Supp. 3d 930, 984-85 (D. Id. Aug. 17, 2020).

<sup>7</sup> Dep't of Educ., Notice of Interpretation, 86 FR 32637 (June 22, 2021); Dep't of Justice, Memorandum (Mar. 26, 2021), <https://www.justice.gov/crt/page/file/1383026/download>; Exec. Order No. 13988, 86 Fed. Reg. 7023 (Jan. 20, 2021). See Proposed Rules, 87 Fed. Reg. 41390, 41571 (proposed 34 C.F.R. § 106.10) (sex discrimination under Title IX includes discrimination based on sex stereotypes, sex characteristics—including intersex traits—sexual orientation, and gender identity). See also *id.* at 41571 (proposed 34 C.F.R. § 106.31(a)(2)) ("Adopting a policy or engaging in a practice that prevents a person from participating in an education program or activity consistent with the person's gender identity subjects a person to more than de minimis harm on the basis of sex.").

<sup>8</sup> *Bostock v. Clayton Cnty.*, 140 S. Ct. 1731, 1741, 1747 (2020).

<sup>9</sup> The Fourth Circuit has explicitly held that it is unconstitutional to bar transgender students from accessing correct gender-separated school restrooms alongside their peers—the model policies appear to directly violate this precedent. *Grimm v. Gloucester Cty. Schl. Bd.*, 972 F.3d 586 (4th Cir. 2020).

The Virginia model policies appear solely designed to further the invalid state interest of relegating transgender students to a lesser status by excluding them from appropriate school facilities and stripping them of equal privacy rights; accordingly, they will likely be found to violate the U.S. Constitution. For example, the model policies suggest that transgender and nonbinary students would be singled out from their peers and directed to use single-person restrooms, which may be located in a school nurse office, locked most of the time, or otherwise difficult to access. This would directly violate the binding Fourth Circuit decision discussed above. Additionally, the model policies create new restrictions on athletic participation and remove the existing avenues that have allowed some transgender students to participate in K-12 school sports (without problems); this would run afoul of Title IX by excluding transgender and nonbinary students from school sports opportunities due to their gender identity and/or transgender status. Ultimately, where Virginia school districts enact these model policies, those districts would likely face not only litigation by private parties but also by the federal government. Violating Title IX would not only create substantial litigation costs for local educational agencies as well as the Commonwealth itself but would also put state federal education funding at risk. In Fiscal Year 2023, Virginia is projected to receive over \$1.23 billion from the U.S. Department of Education in the form of K-12 formula grants and federally supported loans.<sup>10</sup>

### **The State Cannot Forbid Expressions of Basic Courtesy and Respect and Call it Free Speech**

The model policies specifically seek to shield K-12 school staff who would rather discriminate than educate, repeatedly and disingenuously conflating anti-transgender discrimination, including harassment, with freedom of speech and religion. It is well-settled law that unlawful discrimination, including harassment based on protected characteristics such as sex, is not shielded by the First Amendment.<sup>11</sup> As discussed above, the U.S. Department of Education has recognized how controlling federal law—Title IX—already protects transgender and nonbinary students from sex discrimination and harassment that would harm their education.<sup>12</sup> No school employee’s religious freedom entitles them to take students’ educational opportunities away.

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<sup>10</sup> U.S. Department of Education, *Fiscal Years 2021-2023 State Tables for the U.S. Department of Education*, available at <https://www2.ed.gov/about/overview/budget/statetables/index.html>.

<sup>11</sup> *Davis v. Monroe Cnty. Bd. of Educ.*, 526 U.S. 629 (1999) (defining discriminatory harassment as limiting access to educational opportunity or benefit); *Garcetti v. Ceballos*, 547 U.S. 410 (2006) (finding that public employees do not have a First Amendment protection for speech required by routine job duties).

<sup>12</sup> Proposed Rules, 87 Fed. Reg. 41390, 41571 (proposed 34 C.F.R. § 106.10).

The 2019 GLSEN School Climate survey found that most Virginia LGBTQ high schoolers are currently not safe from harassment at school.<sup>13</sup> The same survey found that where students do experience a supportive school environment, they have higher rates of attendance and academic achievement, and are less likely to experience victimization.<sup>14</sup> For many queer and trans students, that essential support often comes from a teacher or school counselor, who may literally serve as a lifeline for our most vulnerable youth. Under the proposed model policies, teachers and other school staff would be censored by their government, forbidden to offer basic courtesy and respect to their LGBTQ+ students in some of the most common scenarios where this is needed. And school staff would be forbidden to ask other students to refrain harassing a fellow student who is transgender, through slurs or through relentless use of incorrect names or pronouns to mock and demean.

The model policies position “permission slips” as a reasonable gateway to minimal and begrudging tolerance at school for transgender and nonbinary youth. This reflects either intentional cruelty or shocking ignorance of the material risks transgender youth must navigate in a society that is brutally, sometimes homicidally, transphobic.<sup>15</sup> In practice, gender expansive Virginia students running up against the model policies’ barriers to respect and inclusion will be forced to weather all the *obstacles* of transphobia even as the policies prohibit schools from providing many of the *supports* foundationally necessary to surviving it.

Some queer and trans students are intensely aware their families are not ready to unconditionally support them; for some, coming out at home will likely or certainly

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<sup>13</sup> GLSEN, State Snapshot: School Climate for LGBTQ Students in Virginia (2021), <https://www.glsen.org/sites/default/files/2021-01/Virginia-Snapshot-2019.pdf> (in a national 2019 survey of LGBTQ student’s experiences, Virginia schools were found to be unsafe for the majority of LGBTQ students, with over half of students experiencing some form of harassment on the basis of their sexual orientation, gender expression, or gender).

<sup>14</sup> GLSEN 2019 School Climate Survey at 70 et seq, available at [https://www.glsen.org/sites/default/files/2021-04/NSCS19-FullReport-032421-Web\\_0.pdf](https://www.glsen.org/sites/default/files/2021-04/NSCS19-FullReport-032421-Web_0.pdf). (“School-based resources, such as supportive student clubs, LGBTQ-inclusive curricula, supportive school personnel, and inclusive, supportive policies, may contribute directly to a more positive school environment for LGBTQ students. These institutional supports may also indirectly foster better school outcomes and well-being for students by decreasing the incidence of negative school climate factors...”). See also *Resilience and Mental Health Among LGBTQ Youth*, The Trevor Project, 1 (June 2022), <https://www.thetrevorproject.org/wp-content/uploads/2022/06/June-Brief-Resilience-Among-LGBTQ-Youth.pdf> (LGBTQ youth with access to supportive adults like family members are more able to navigate the significant stress and anxiety that come with living in an unaccepting society); *Suicide Risk and Access to Care Among LGBTQ College Students*, The Trevor Project, 1 (Sept. 2022), <https://www.thetrevorproject.org/wp-content/uploads/2022/09/September-Research-Brief-September-Research-Brief.pdf> (acknowledging “protective factors,” including access to supportive faculty members, can decrease high rates of depression, suicidality, and victimization LGBTQ college students face); *The Mental Health and Well-Being of Multiracial LGBTQ Youth*, *The Trevor Project*, 19 (Aug. 2022), [https://www.thetrevorproject.org/wp-content/uploads/2022/08/Multiracial\\_LGBTQ\\_Youth\\_Mental\\_Health\\_Report.pdf](https://www.thetrevorproject.org/wp-content/uploads/2022/08/Multiracial_LGBTQ_Youth_Mental_Health_Report.pdf) (having access to supportive people was associated with significant less odds of attempting suicide, with survey respondents having 55 percent lower odds of attempting suicide in the past year).

<sup>15</sup> Jamie Wareham, *375 Transgender People Murdered in 2021—‘Deadliest Year’ Since Records Began*, *Forbes* (Nov. 11, 2021), available at <https://www.forbes.com/sites/jamiewareham/2021/11/11/375-transgender-people-murdered-in-2021-deadliest-year-since-records-began/>.

result in domestic abuse, homelessness, or even entering the foster system.<sup>16</sup> Other students will simply not be personally ready to come out to family without support and guidance from other adults in their lives. A blanket policy of mandating potentially harmful and discriminatory speech by school staff will harm entire communities by prohibiting support at the exact moment it may be most needed.

Parents everywhere in the U.S. already have strong and important rights concerning their children's education, and the small minority of extremists who claim to be fighting for "parental rights" are, in truth, stoking bias, fear, and baseless conflict between schools and the communities they serve to score political points.

## **I. Government enforcement of sex stereotypes is especially likely to harm students of color, and increases student risk of sex harassment and assault**

### **A. Transphobia and White Supremacy**

The model policies are very likely to cause disparate harm to Black and brown students in Virginia who are perceived as gender nonconforming. Transgender people of color have insightfully explained the connections between rigid sex stereotypes and the systemic oppression of Black and brown communities. Dating back to their enslavement, Black women in the U.S. have faced a long and disgraceful history of being systematically stereotyped as too muscular, aggressive, or unattractive to be "real" women. Today, Black feminists continue to fight against racialized scrutiny of their femininity and gender expression,<sup>17</sup> and white supremacist groups are a key part of the recent increase in calls for violence against queer and transgender people.<sup>18</sup>

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<sup>16</sup> It is estimated that over half of LGBTQ youth are over twice as likely to risk homelessness resulting from familial rejection after coming out as compared to non-LGBTQ youth. See, e.g., Chapin Hall at the University of Chicago, *Missed Opportunities: LGBTQ Homelessness in America* 3 (2018), <https://www.chapinhall.org/wp-content/uploads/VoYC-LGBTQ-Brief-FINAL.pdf>; The Trevor Project, *Homelessness and Housing Instability Among LGBTQ Youth* 5 (2022), <https://www.thetrevorproject.org/wp-content/uploads/2022/02/Trevor-Project-Homelessness-Report.pdf> (noting that "family conflict around youths' LGBTQ+ identities is a driving factor in LGBTQ+ youth homelessness"). See also HRC, *2018 LGBTQ Youth Report* 4-5 (2018), [https://assets2.hrc.org/files/assets/resources/2018-YouthReport-NoVid.pdf?\\_ga=2.213851549.885232345.1588877721-476157681.1588877721](https://assets2.hrc.org/files/assets/resources/2018-YouthReport-NoVid.pdf?_ga=2.213851549.885232345.1588877721-476157681.1588877721) (78 percent of LGBTQ+ youth respondents were not out for fear they would be ostracized by their families, with one respondent stating: "if my parents found out I'm gay, they would disown me and kick me out.")

<sup>17</sup> Aamha Modhin, *For black women, femininity and feminism are not mutually exclusive*, Quartz (last updated July 20, 2022), available at <https://qz.com/quartz/1158081/for-black-women-femininity-and-feminism-are-not-mutually-exclusive/>.

<sup>18</sup> "Throughout the [white power] movement, gender nonconformity threatens a worldview that is fixated on immutable, straitened, and antiquated gender roles." Talia Lavin, *Why Transphobia is at the Heart of the White Power Movement*, The Nation (Aug. 18, 2021), available at <https://www.thenation.com/article/society/transphobia-white-supremacy/>; Southern Poverty Law Center, *White Nationalist Threats Against Transgender People Are Escalating* (June 26, 2019), available at <https://www.splcenter.org/hatewatch/2019/06/26/white-nationalist-threats-against-transgender-people-are-escalating>.

The proposed model policies rely on overbroad stereotypes about sex and gender—specifically, they assume that assigned sex at birth is an appropriate metric for schools to label and divide students of every age, in every type of activity. Many schools may not even have reliable records indicating every student’s assigned birth sex. When school staff are required, per the model policies, to surveil students and report any deviation from expected “expression of gender,” they will inevitably be relying upon and recreating sex stereotypes to make a snap judgment (e.g., “a five-year-old girl put on a cowboy hat from the dress-up bin, that’s acting too much like a boy.”). Black and brown girls—who, as explained above, are routinely targeted for not conforming to society’s expectations of white femininity—would be especially vulnerable to the constant gender scrutiny demanded in every aspect of school life by the model policies, as would queer students and any other students who are perceived as not conforming to gender norms. By codifying gender conformity as a condition for full privacy rights and equal dignity in Virginia schools, the model policies would perpetuate harmful racist and sexist stereotypes that routinely deprive Black and brown girls and young women of equal learning opportunities.

The model policies may also contribute to harassment and educational harms for intersex students, who are born with natural variations in sex-linked physical characteristics. Intersex students already often face harassment and other forms of discrimination in schools because of their sex characteristics.<sup>19</sup> In a 2020 survey that included over 1,000 intersex youth, 45% reported gender-based discrimination by school staff.<sup>20</sup> The Fourth Circuit in *Grimm* noted that intersex people may “comprise a greater fraction of the population than transgender individuals,” and yet school policies such those the court held invalid in that case and those proposed here fail to account for the circumstances of, and may also harm, these students.<sup>21</sup>

## **B. Sex Harassment and Assault**

Implementation of the proposed model policies will also subject students to heightened risks of sex harassment and assault. A growing body of research shows that transgender students can thrive when they are supported and accepted by the adults in their lives; social support and affirmation is the evidence-supported intervention to mitigate alarming rates of victimization, psychological distress, and suicidality among transgender youth.<sup>22</sup>

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19 See, e.g., Simons J.D., Gonzalez J.-M., Ramdas M., Supporting Intersex People: Effective Academic and Career Counseling, 14 *J. LGBTQ ISSUES COUNS.* 91-209 (2020); Brief of interACT: Advocates for Intersex Youth, et al., as *Amicus Curiae* in Support of Respondent, Gloucester County School Board v. G.G. ex rel. Grimm, No. 16-273 (U.S. Mar. 2, 2017).

20 The Trevor Project, *The Mental Health and Well-being of LGBTQ Youth who are Intersex* (2021), available at: <https://www.thetrevorproject.org/wp-content/uploads/2021/12/Intersex-Youth-Mental-Health-Report.pdf>.

21 *Grimm v. Gloucester Cnty. Sch. Bd.*, 972 F.3d 586, 615, 623-24 (4th Cir. 2020).

22 See *supra* note 21 and accompanying text.



The proposed model policies would worsen already-high rates of sex discrimination faced by transgender students by impeding this much-needed social support and affirmation for queer and transgender youth. Bullying, harassment, and sexual violence are too often faced by queer and transgender youth—and transgender girls and young women face especially high rates of this mistreatment. If schools are required to emphasize how “different” these students are, such as by singling out transgender students for required use of single-person restrooms in a nurse or counselor’s office, the social stigma driving this abuse will only worsen.<sup>23</sup>

Transgender girls suffer exceedingly high rates of sex harassment and other forms of sex discrimination in schools. According to a 2015 study of more than 27,000 transgender adults, 77 percent of those who were out or perceived as transgender while in K-12 schools faced mistreatment in school due to their gender identity—54 percent were verbally harassed, 24 percent were physically attacked, and 13 percent were sexually assaulted.<sup>24</sup> Transgender girls are especially vulnerable: they are twice as likely to have been physically attacked or sexually assaulted in K-12 schools due to their gender identity compared to transgender boys and nonbinary children.<sup>25</sup> Black children make up about 20% of Virginia’s youth population,<sup>26</sup> and K-12 students who are both transgender and Black face even higher rates of anti-trans abuse, with 28 percent facing physical attacks and 19 percent facing sexual assault because of their gender.<sup>27</sup>

When schools tolerate students being targeted and victimized because of who they are, student safety and wellbeing plummets. Among transgender adults who were out or perceived as transgender in K-12 school, 17 percent of them left at least one school because of the anti-transgender mistreatment they faced.<sup>28</sup> Transgender women are 1.5 times more likely to have left at least one K-12 school and nearly twice as likely to have been expelled from a K-12 school because of anti-transgender mistreatment as transgender men and nonbinary people.<sup>29</sup> These experiences often had life-threatening consequences: more than 52 percent of transgender adults who faced anti-transgender mistreatment in K-12 education had attempted suicide at least once by the time they

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<sup>23</sup> Dr. Edith Bracho-Sanchez, *Transgender teens in schools with bathroom restrictions are at higher risk of sexual assault, study says*, CNN (May 6, 2019), available at <https://www.cnn.com/2019/05/06/health/trans-teens-bathroom-policies-sexual-assault-study/index.html>. See also *Grimm v. Gloucester Cty School Bd.*, 972 F.3d 586, 617–18 (4th Cir. 2020) (quoting *Doe v. Boyertown Area Sch. Dist.*, 897 F.3d 518, 530 (3d Cir. 2018)) (in which the Fourth Circuit acknowledged that “the stigma of [a transgender boy] being forced” to use separate restrooms, such as single-user stalls or the one in the nurse’s office, would only “‘invite[] more scrutiny and attention’ from other students, ‘very publicly brand[ing] all transgender students with a scarlet ‘T.’”).

<sup>24</sup> National Center for Transgender Equality, *The Report of the 2015 U.S. Transgender Survey 4*, 11 (2017) [hereinafter USTS Report], available at <http://www.ustranssurvey.org>.

<sup>25</sup> *Id.* at 133, 134.

<sup>26</sup> <https://datacenter.kidscount.org/data/line/103-child-population-by-race?loc=48>

<sup>27</sup> National Center for Transgender Equality, 2015 U.S. Transgender Survey: Report on the Experiences of Black Respondents 11 (2017) [hereinafter USTS Black Report], available at <http://www.ustranssurvey.org>.

<sup>28</sup> USTS Report *supra* note 24, at 12.

<sup>29</sup> *Id.* at 135.

took the survey, compared to 37 percent of transgender adults who had not been mistreated in K-12 school and 4.6 percent of their cisgender peers.<sup>30</sup>

Neither the victimization nor the distress suffered by transgender youth are inevitable. Rather, research demonstrates they are primarily a product of social stigma and rejection, whereas supporting and inclusive school policies are associated with lower levels of victimization of transgender students. Overall, when transgender youth are supported and accepted by adults in their lives, the dramatic disparities in their mental health outcomes largely disappear.<sup>31</sup>

## **II. Trans inclusive policies help create safe, affirming, and equal educational opportunities for girls, women, and all students**

Girls—especially girls facing marginalization along other axes such as race, sexual orientation, disability, transgender status, parenting status, and others—face real, serious barriers to equal opportunity. None of these problems are solved by singling out and bullying transgender students.

Women’s rights organizations have made clear that full inclusion of transgender students is one part of the fight to end sex discrimination and harassment in schools. For example, in February 2021, the National Coalition for Women and Girls in Education—which includes organizations like American Association of University Women (AAUW), Girls Inc., and YWCA USA—issued a statement announcing the coalition’s support of transgender and nonbinary students’ “full and equal access to sex-separated activities and facilities consistent with their gender identity, including athletics teams.”<sup>32</sup> Similarly, in 2016 the National Alliance to End Sexual Violence led dozens of sexual assault survivor and domestic violence organizations in a consensus statement confirming that laws protecting transgender people from discrimination in restrooms and locker rooms is consistent with the movement to end sexual and domestic violence.<sup>33</sup>

If Virginia’s Department of Education is sincerely interested in protecting the rights and dignity of all students, including the right to be free from sex-based

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<sup>30</sup> USTS Report *supra* note 24, at 132. Importantly, the survey did not capture the experiences of the transgender students who died by suicide.

<sup>31</sup> University of Washington News, *Transgender children supported in their identities show positive mental health*, (Feb. 26, 2016), available at <https://www.washington.edu/news/2016/02/26/transgender-children-supported-in-their-identities-show-positive-mental-health/>.

<sup>32</sup> National Coalition for Women and Girls in Education, *NCWGE Supports Transgender and Nonbinary Students’ Full and Equal Participation in All Education Programs and Activities* (Feb. 12, 2021), <https://www.ncwge.org/activities.html>.

<sup>33</sup> National Task Force to End Sexual and Domestic Violence Against Women, *National Consensus Statement of Anti-Sexual Assault and Domestic Violence Organizations in Support of Full and Equal Access for the Transgender Community* (April 21, 2016), <https://endsexualviolence.org/wp-content/uploads/2017/09/STATEMENT-OF-ANTI-SEXUAL-ASSAULT-AND-DOMESTIC-VIOLENCE-ORGANIZATIONS-IN-SUPPORT-OF-EQUAL-ACCESS-FOR-THE-TRANSGENDER-COMMUNITY.pdf>.

discrimination and abuse, it should take steps to ensure that Virginia public schools have meaningful improvement in areas that gender justice advocates have long pointed to as real sources of dignity and equality in school, including:

- Policies in all K-12 schools that clearly define sex harassment and are well-publicized to the school community, with examples of unacceptable behaviors and lists of possible consequences
- Training programs for school administrators, employees, and students that recognize and discourage relying on stereotypes that label girls of color and other marginalized students as less credible or deserving of protection
- Investment in school social workers and counselors, instead of law enforcement in schools
- Comprehensive education on sexual and relationship health for all students that is medically accurate, evidence based, LGBTQI+ affirming, and developmentally appropriate. This decreases the chance that students will suffer or perpetrate sexual/dating violence, or other forms of sex harassment
- The abolition of dress and grooming codes, which frequently reflect sex and race stereotypes, and are enforced in discriminatory ways, sending students the dangerous message that girls invite or provoke sex harassment, and a girl's looks are more important than her thoughts and her learning time

Virginia school districts should resoundingly reject these model policies and focus on closing *actual* gender and racial disparities that harm students, including protecting all students from sex harassment and abuse.

### **III. Conclusion**

The National Women's Law Center and our supporting signatory organizations support the full inclusion of transgender girls, and all transgender, nonbinary, and intersex students. As courts and scientists overwhelmingly have stated, transgender girls *are* girls. They need and deserve the same thing as their classmates: a safe school environment where they can learn, grow, and be part of a community. When schools single out transgender and nonbinary students for mistreatment, segregation, and second-class status, they are harming these students gravely—they are also failing in their duty to educate cisgender students who will one day need to navigate a multifaceted and changing adult world, where gender diversity is a fact of reality.

Students who are transgender deserve the chance to succeed and thrive like any other student. Please reach out to Auden Perino, Senior Counsel at the National Women's Law Center ([aperino@nwlc.org](mailto:aperino@nwlc.org)), if you have any questions.

Thank you,

National Women's Law Center, joined by

Planned Parenthood Advocates of Virginia  
Virginia National Organization for Women (NOW)  
Advocates for Youth  
American Association of University Women  
American Humanist Association  
Athlete Ally  
CenterLink: The Community of LGBT Centers  
Clearinghouse on Women's issues  
Education Law Center PA  
End Rape on Campus  
Equal Rights Advocates  
Equality California  
Family Equality  
Feminist Majority Foundation  
FORGE, Inc.  
Freedom From Religion Foundation  
Gender Justice  
Gender Spectrum  
GLSEN  
Inclusion Playbook  
interACT: Advocates for Intersex Youth  
Legal Momentum, the Women's Legal Defense and Education Fund  
LGBT Tech  
Minority Veterans of America  
National Black Justice Coalition  
National Center for Transgender Equality  
National Center for Youth Law  
National Council of Jewish Women  
National LGBTQ+ Bar Association  
National Women's Political Caucus  
Oasis Legal Services  
People for the American Way  
Physicians for Reproductive Health  
SIECUS: Sex Ed for Social Change  
The Advocacy Institute  
The Sikh Coalition  
The Trevor Project

Union for Reform Judaism  
Women's Law Project