

Transgender Policies and Parental Rights

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I have no known conflict of interest to disclose.

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Transgender and Gender Expansive Student Privacy: A Review of Relevant Cases and Literature

Case Review

Case 1: M.L.B. v. S.L.J. (1996)

In this case, the plaintiff's parental rights to her children were permanently terminated. M.L.B. was asked to pay over \$2,000 in record preparation fees to file an appeal. She did not have the funds to pay these fees, so her appeal was ultimately dismissed. The issue in the case was "whether a state, consistent with the Due Process and Equal Protection Clauses of the Fourteenth Amendment, may condition appeals from trial court decrees terminating parental rights on the affected parent's ability to pay record preparation fees" (*M.L.B. V. S.L.J.*, n.d., Issue section).

The Supreme Court ruled for the plaintiff, ruling that the preparation fees should not prevent her from filing an appeal for her parental rights termination. Not only were her rights violated, but Justice Ginsburg, in her majority opinion, stated that "choices about marriage, family life, and the upbringing of children are among associational rights the Court has ranked as fundamental and protected from state interference by the Fourteenth Amendment" (*M.L.B. V. S.L.J.*, n.d., Holding and Reasoning section). Therefore, it stands to reason that when minor student privacy rights are concerned, the courts should not interfere with the parental right to know what their child is doing or saying at school relative to gender identity. To do so would interfere with the Fourteenth Amendment Equal Protection Clause, which "prohibits state and local governments from treating individuals differently under similar circumstances without sufficient justification" (*Fourteenth Amendment Equal Protection Clause*, n.d., Definition section).

Case 2: Ricard v. USD 475 Geary County (2022)

In this case, a teacher with strong religious convictions felt uncomfortable calling their students any name other than their given name. When encountering two female students who expressed a preference for going by male names, the teacher refused to call them “names that were different than their legal names and pronouns inconsistent with their biological sex” (*Ricard V. USD 475 Geary County Dist. Court, D. Kansas 2022, 2022*, para. 4). The teacher was formally reprimanded and suspended. The school board amended policies later that year to specify that students “would be referred to by their preferred name and pronouns” but that the district would not speak to parents on this matter unless “the student requests the administration or counselor to do so” (*Ricard V. USD 475 Geary County Dist. Court, D. Kansas 2022, 2022*, para. 6). This put the teacher in a position where they were asked to refer to the students one way while in school but use their given names when communicating with parents. The school district utilized FERPA as the basis for the policy. The plaintiff “believes that addressing students one way at school and a different way when speaking to their parents is dishonest...being dishonest violates her sincere religious beliefs” (*Ricard V. USD 475 Geary County Dist. Court, D. Kansas 2022, 2022*, para. 7). The case was based on the fact that the teacher’s right of free speech, free exercise of religion, and due process were violated. Ultimately, the court issued an injunction prohibiting the school district from penalizing the teacher, and the school district ultimately settled with the plaintiff for \$95,000 in damages.

In this case, the school district attempted to interpret FERPA to avoid disclosing gender information to parents unless their minor children consented, which created an uncomfortable and unrealistic situation for teachers communicating with parents. “The district could not have a legitimate, compelling interest in withholding information based on FERPA when FERPA

required the District to disclose the very information at issue- at least to the extent the information was contained in an education record” (*Ricard V. USD 475 Geary County Dist. Court, D. Kansas 2022, 2022, 1. Likelihood of Success section*).

Case 3- John and Jane Parents 1 et al. v. Montgomery County Board of Education et al. (2022)

In this case, parents of minor children attending school in Montgomery County, MD, allege that policies adopted by the school district interfered with their parental rights. The guidelines were “expressly designed to circumvent parental involvement in a pivotal decision affecting their children’s care, health education, and future” (*John and Jane Parents 1 Et Al V. Montgomery County Board of Education Et Al, No. 8: 2020cv03552 - Document 60 (D. Md. 2022), 2022, Factual and Procedural Background section*). The policy goes further to state that personnel can “evaluate minor children about sexual matters and allow minor children, of any age, to transition socially to a different gender identity at school without parental notice or consent” (*John and Jane Parents 1 Et Al V. Montgomery County Board of Education Et Al, No. 8: 2020cv03552 - Document 60 (D. Md. 2022), 2022, Factual and Procedural Background section*).

While the plaintiff’s arguments are compelling, they fail to address additional sections of the policy, which encourage family and parental involvement as soon as possible. “Far from commanding the alleged interference with the parental rights that the Plaintiffs describe, the Guidelines carefully balance the interests of both the parents and students, encouraging parental input when the student consents” (*John and Jane Parents 1 Et Al V. Montgomery County Board of Education Et Al, No. 8: 2020cv03552 - Document 60 (D. Md. 2022), 2022, Discussion section*). The guidelines in the policy support familial inclusion positively and productively. The

school district made sure to include wording in the policy that will “neither mandate nor encourage the exclusion or distrust of parents, but aim to include parents and other family in the support network they are intended to create” (*John and Jane Parents I Et Al V. Montgomery County Board of Education Et Al*, No. 8: 2020cv03552 - Document 60 (D. Md. 2022), 2022, Discussion section) A motion to dismiss the case was filed, and granted by the court. In this case, including wording in the policy that encourages familial involvement and aims to create a plan for the student worked in the school district’s favor.

Case 4- Wyatt v. Fletcher et al. (2013)

Wyatt, a parent of a high schooler, alleged that her daughter’s softball coaches disclosed her daughter’s sexual orientation in a disciplinary meeting, and her daughter’s Fourteenth Amendment rights were violated. The defendants, in this case, sought qualified immunity, which “protects state and local officials, including law enforcement officers, from individual liability unless the official violated a clearly established constitutional right” (*Qualified Immunity*, 2021, para. 2). They argued that since there is no established law concerning the rights of a student concerning the Fourteenth Amendment, they are barred from having federal claims filed against them. The request for qualified immunity was granted. “The Fifth Circuit has never held that a person has constitutionally protected privacy interest in her sexual orientation, and it certainly has never suggested that such a privacy interest precludes school authorities from discussing with parents matters that relate to the interests of their children” (*Wyatt V. Fletcher, Et Al.*, No. 11-41359 (5th Cir. 2013), 2013, p. 12). The courts reversed and vacated the lower courts' ruling and remanded the case for appropriate judgment.

Analysis as Spokesperson

As an employee in the public school system, I can advocate for the disclosure of private information of minors to their parents regarding gender identity and sexual orientation. I work closely with parents, teachers, and students and understand the value of openness and transparency. As an elementary school teacher, I recognize the importance of the legality of parental rights and the right for parents to be notified of any issues arising during the school day.

Literature Review

Due to such a controversial topic, many articles have been published on transgender students and their privacy rights. Of interest to this literature review is an article concerning Title IX and the experiences of transgender children: “There are different protocols for the treatment of transgender children, adolescents, and adults...there is no consensus within the psychological community regarding best practices for treating and supporting prepubertal transgender children” (Velte, 2019, pp. 40–41). This directly plays into whether parents are entitled to know what their children identify as in school, as it can certainly be seen as a medical matter that should be disclosed to and addressed by the parents. The author also describes the hostile environment children with gender dysphoria often encounter during their school day. “Transgender students often face hostility, harassment, bullying, and even violence from peers, teachers and school administrators... data shows that hostile school climates result in transgender youth having lower academic aspirations, which leads to dropping out of school at higher rates than cisgender students” (Velte, 2019, pp. 43–44).

“The gender theory battle in this domain of the culture wars is playing out with noteworthy tension in the classrooms, locker rooms, and bathrooms of our nation’s K-12 public schools” (Coupet, 2020, p. 5). It should be noted that parents and schools are tasked with raising

children to be good citizens making meaningful contributions to society. “Both parents and schools carry out their shared, but unique, roles in shaping children within the politically charged context of our pluralistic society’s varied social and religious values, diverse moral principles, and changing mores” (Coupet, 2020, p. 6). Parents and schools should collaborate; transparency is key to a successful partnership. To withhold information a student divulges to school administrators from their parents regarding gender identity violates that partnership.

Amy Gutmann suggests that the partnership between parents and schools should seek to maintain balance. She states, “precisely because children are members of both families *and* the state, neither entity *alone* should be vested with absolute authority to control the education of future citizens” (Coupet, 2020, p. 24). However, “given the increasing incidents of incivility reported to be taking place in schools...we should be pondering whether parents are doing an adequate job of planting the seeds of virtue that the next generation will need to live harmoniously in an increasingly diverse nation” (Coupet, 2020, p. 25). Therefore, there needs to be a stronger, more transparent partnership between home and school that is supportive and supported. Finally, “although the research is still relatively new, longitudinal studies reveal that overall adjustment for gender diverse children is best supported with affirmative practices and that socially supported transgender children might have better mental health outcomes than transgender children who are not supported in their identities” (Coupet, 2020, p. 48).

An article published by Teachers College Record in 2022 attempts to gain educators' perspectives on transgender policies in schools. A study conducted in 2016 indicated that a large number of staff in schools felt unprepared for trans students. “The feelings of anxiety and lack of confidence incited by the presence of a trans child in their school were attributed to a lack of preparation and awareness in their training” (Martino et al., 2022, p. 69). It stands to reason that

a strong partnership between parents and educators, as well as additional training, would assist teachers in feeling more prepared to meet the needs of all students in their classrooms. Educators in the study were asked to answer a series of questions focusing on “educators’ awareness and knowledge of trans-inclusive policies,” including privacy and parental rights (Martino et al., 2022, p. 76). Twenty-eight percent of those surveyed indicated little to no awareness of school board policies on transgender and gender-expansive students (Martino et al., 2022). While many demonstrated an understanding of their school policies, “some educators noted the limitations of policy focused primarily on accommodation...to the extent to which a commitment to accommodation merely translates into a surface-level support” (Martino et al., 2022, p. 78). Educators must have a clear understanding of the policies put forth by their districts to avoid legal entanglement in the future.

Another important consideration presented in current literature is the capacity of minors to make healthcare decisions about being transgender. “Within the provision of pediatric healthcare...are tensions regarding a child’s best interests... except in the setting of abuse or neglect, parents are granted authoritative decisional power on behalf of legal minors to provide consent for health-related services because of their legal responsibility and the assumption that they will act in the best interests of their child” (Shook et al., 2022, p. 3). Before the age of eighteen, children, their parents, and medical practitioners are all involved in decision-making. This shared decision-making model, or SDM, “presents unique challenges for adolescents who seek healthcare for issues that are frequently stigmatized and may evoke negative consequences if disclosed to parents” (Shook et al., 2022, p. 3). While some policies in place support autonomic decisions in certain situations, no policies currently exist that support autonomous decision-making of minors concerning gender identity. This directly ties to school policies

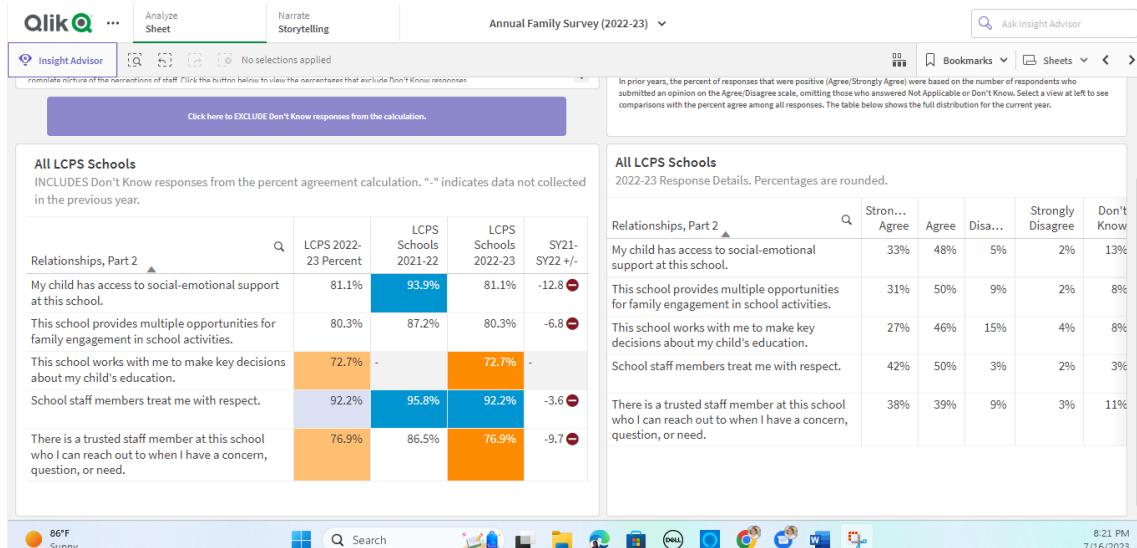
because any health-related issues discussed must be communicated to parents promptly. Is it appropriate to withhold information from parents about a child's gender identity? "How does one's ability, or lack of ability, to legally consent for health services and interventions impact trans minors' decisional power to influence health-related decisions effectively made by adults?" (Shook et al., 2022, pp. 4–5). If school-age children cannot make these medical decisions for themselves, it is unethical for schools to withhold this vital medical information from parents. As one study indicated, parents were often more supportive of their children's gender identity when they worked collaboratively with health providers. "When parents expressed concern about their children's authority of knowledge, they often responded by seeking medical or psychiatric evaluation...in many cases, youth were ultimately able to garner parental support for their identities through the authority of knowledge performed by medical and mental health providers" (Shook et al., 2022, p. 14). "In many cases, parents' abilities to support their trans children evolved over time" ((Shook et al., 2022, p. 18).

Considering the current literature, it can be concluded that a clear, effective policy highlighting student and parent rights regarding gender identity is essential to keeping open lines of communication and transparency in the relationships between school, community, and home.

Supporting Data

Figure 1

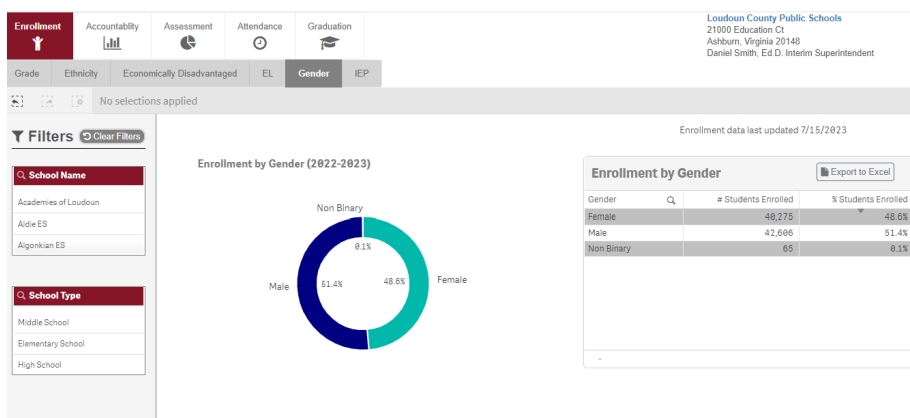
2022-2023 LCPS Parent Survey Responses



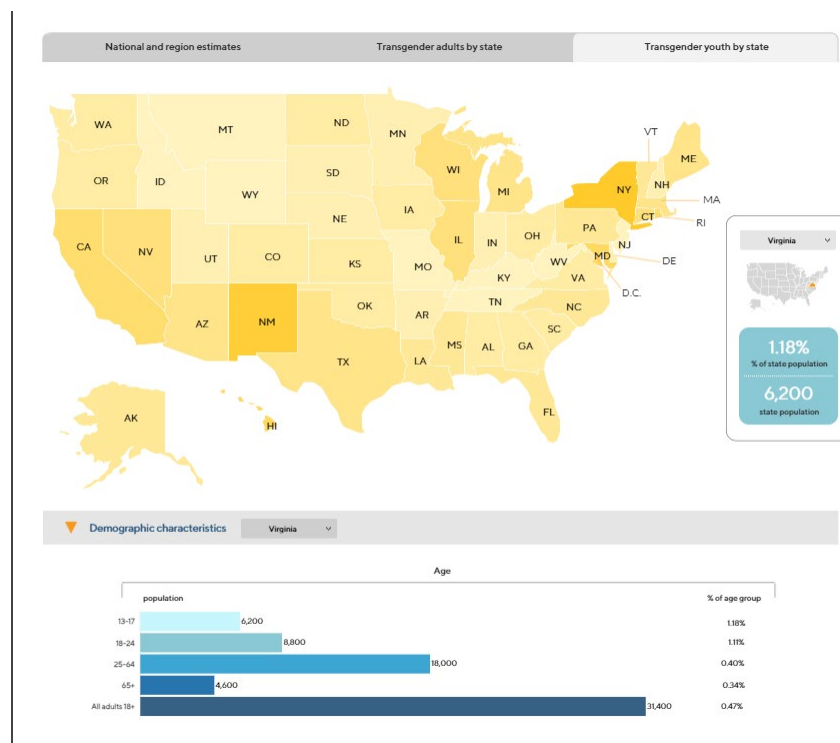
Note. This table shows the responses to a survey of secondary school parents in 2022-2023.

Figure 2

LCPS Enrollment by Gender



Note. There are currently 65 students registered as “non-binary” in LCPS.

Figure 3*Estimated Number of Transgender students in Virginia aged 13-17*

Note. <https://williamsinstitute.law.ucla.edu/subpopulations/transgender-people/>

Analysis and Final Recommendations

It is important to understand that while students are entitled to a reasonable standard of privacy, it is equally important that parents of minors be made aware of their child's questioning or changing their gender identity. This is a serious assertion for a child to make, and parents are entitled to know their child's actions and be involved in the process. While the 2021 model policies published by the VDOE, from which the current policy in Loudoun County Public Schools is modeled, did not speak to the legal rights of parents and guardians, the 2022 model policies take parent/guardian involvement into account. Therefore, the current policy should be updated to reflect the importance and legality of parental involvement in the rights of transgender and gender-expansive students.

Transgender issues are a hot-button issue in the United States. It is a relatively new territory to navigate in the legal system, especially regarding education and counseling services for students. In many situations, it can be difficult to know when disclosing a student's gender status is right. Studies are becoming publicly available that analyze trends in families of transgender students. "LGBT youth have a 120 percent increased risk of experiencing homelessness compared to youth who identified as heterosexual and cisgender" (Virginia Department of Education [VDOE], 2022, p.12). It is also important to note that "there are no regulations requiring school staff to notify a parent or guardian of a student's request to affirm their gender identity" (Virginia Department of Education [VDOE], 2022, p.12). As an educator, it is important to know what is legal and expected if a student discloses that they have a different gender or has questions about their gender/sexual identity. It is up to public school systems to develop policies that align with state policies and regulations.

When considering the relevant cases and literature, the best way to support students and families is to cultivate a transparent relationship between home and school that is both supportive and supported. In the cases of *Ricard v. USD 475* and *John and Jane Doe Parents v. Montgomery County School District*, a lack of clear school policies regarding student gender identity disclosure and a lack of understanding of the implications of FERPA resulted in a legal entanglement that could have been avoided. *Wyatt v. Fletcher* reinforces the need for clear and understandable school policies around parental rights and when schools are responsible for disclosing student gender information with the goal of creating a supportive environment for the child.

An analysis of the data shows that over 70% of parents feel that their child's school works with them to make educational decisions. This is a high number; with clearly-worded

policies, that number can increase even further. With an estimated 6,200 transgender youth in Virginia, it is vital that the public school systems adopt clearly-worded policies to support these students and their families.

When data, case law, and relevant literature are all considered, the best way to avoid any future legal entanglement would be to rewrite existing policies on transgender and gender-expansive students to reflect the importance of transparency and strengthening relationships between families and schools. The Virginia Department of Education, or VDOE, reissued guidance in 2022 and created sample policies to reflect the need for family involvement. I would make the following recommendations:

Policy, Program, or Practice Amendment/Changes	Discussion of suggested amendments or changes relating to Social Justice, Equity, Confidentiality, Acceptance, and/or Respect Between and Among Students & Faculty
<p>“to ensure parents can make the best decisions with respect to their child, school personnel shall keep parents fully informed about all matters that may be reasonably expected to be important to a parent, including, and without limitation, matters related to their child’s health, and social and psychological development” (Virginia Department of Education [VDOE], 2022, p.3).</p>	<p>The wording of the suggested amendment reflects the wording in the guiding principles of the 2022 VDOE document. In this case, the wording respects the role of parents in their child’s education and social/emotional development. The wording also respects parents’ rights in accordance with the Fourteenth Amendment.</p>
<p>“At the request of parents, LCPS should designate an administrator or counselor to speak, together with the student’s parents, with any student regarding questions pertaining to gender” (Virginia Department of Education [VDOE], 2022, p. 15).</p>	<p>The suggested amendment is aligned with the sample policy created by the VDOE. It also considers and respects parental rights to their child’s education.</p>

Policy, Program, or Practice Amendment/Changes	Discussion of suggested amendments or changes relating to Social Justice, Equity, Confidentiality, Acceptance, and/or Respect Between and Among Students & Faculty
<p>“Each school shall make reasonable available, with available resources, guidance and counseling services to all students as provided in Virginia Administrative Code 8 VAC 20-620-10 and pursuant to parental notification requirements therein...parents must be informed and given an opportunity to object before counseling services pertaining to gender are given” (Virginia Department of Education [VDOE], 2022, p.15).</p>	<p>The suggested amendment is aligned with the sample policy created by the VDOE. It also considers and respects parental rights to their child’s education while respecting the current Virginia Administrative Code pertaining to parental involvement in education and counseling.</p>

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