



Ms. Stella Pekarsky, Chair
Fairfax County School Board
8115 Gatehouse Road, Suite 5400
Falls Church, VA 22042

Re: Notice of Legal Violation/Regulation 2601.36P

Dear Chair Pekarsky:

America First Legal Foundation (AFL) is a national, nonprofit organization working to promote the rule of law in the United States, prevent executive overreach, and protect the Constitutional due process and equal protection rights of all Americans. This letter is addressed to you in your capacity as Chair of the Fairfax County School Board (“FCSB”).

To begin with, AFL trusts that you, FCSB, and the Fairfax County Public Schools (“FCPS”) are aware that the United States Constitution protects the unique relationship parents have with their children, as well as the constitutional importance of a parent's right to bring up his or her child as he or she sees fit, *see Troxel v. Granville*, 530 U.S. 57, 65 (2000); Va. Code § 1-240.1; that the U.S. Constitution’s First Amendment guarantees parents’, guardians’ and students’ freedom of speech, religion, and association; that Article I, Section 16 of the Constitution of Virginia and the Virginia Act for Religious Freedom (Va. Code § 57-1 et seq.) protect Virginia citizens’ religious rights; and that violating these fundamental civil rights leads to adverse legal consequences.

As you are no doubt aware, FCSB recently proposed amendments to FCPS’s Student Rights and Responsibilities handbook regulation 2601.36P (the “Regulation”). Regulation Chapter II, titled ACTS FOR WHICH STUDENTS MAY BE DISCIPLINED, DISCIPLINARY PROCEDURES, AND INTERVENTIONS, sets forth a comprehensive list of actions exposing a student to disciplinary action including, *inter alia*, at page 21 SBAR Code RB9h, “[u]sing slurs based upon the actual or perceived gender identity (which includes, but is not limited to, malicious deadnaming or malicious misgendering).”¹ The Regulation mandates graduated

¹ Fairfax County School Board, Regulation 2601.36P, Student Rights and Responsibilities Booklet, <https://bit.ly/3yTsZxE>.

levels of discipline for violation of SBR CRB9h, including suspension for up to five days and referral to the division superintendent. It further provides that administrators retain the authority “to exercise [the] discretion required to construct a response and intervention that, in their judgment, is appropriate under the totality of the circumstances presented.”² In other words, SBR CRB9h is a floor, not a ceiling, for punishment.

FCSB proposes increasing punishments for young children using “slurs based on actual or perceived gender” and “slurs based on actual or perceived gender identity,” and “deadnaming.” As these “offenses” are currently defined, there is a significant overbreadth and vagueness concern that could lead to staff making subjective discipline decisions that violate student and parent rights. Among other thing, FCSB’s discipline regime compels student speech, interferes with religious rights, and interferes with parents’ fundamental right to educate their children. FCBS, however, has failed to articulate a compelling government interest for these things.

FCSB’s proposed amendments to Regulation 2601.36P present significant constitutional concerns and raise deeply troubling questions. Targeting and punishing young children to advance gender ideology reflects a distressing lack of prudence and judgment, and a deep disregard for Fairfax students and parents. Therefore, we urge you to withdraw the proposed amendments to Regulation 2601.36P to the Student Rights and Responsibilities handbook. Should FCSB redraft them, it should do so only in strict compliance with the federal and state law, and in a manner that truly advances and respects the interests and legal rights of all FCPS children, their parents, and guardians.

Sincerely,

/s Ian Prior

Ian Prior

America First Legal Foundation

² *Id.*