



January 24, 2023

House Committee on Education  
Early Childhood/Innovation Subcommittee  
900 East Main Street  
Richmond, VA 23219

**Re: Oppose House Bill 1434 – bill to limit parent and student agency over education records**

Dear Chair Coyner and members of the Early Childhood/Innovation Subcommittee:

The ACLU of Virginia strongly opposes House Bill 1434 (HB1434). This bill takes decision-making authority out of the hands of parents and students and places it in the government's: mandating that a court order dictates how a child is referred to on nearly all documents generated in a public school.

Mandating pupil legal names on the full panoply of education records is unnecessary, could violate student privacy, and risks creating a hostile learning environment. We ask that you maintain the status quo of schools preserving legal name on records only where necessary. Students and parents should be able to update their records to reflect another name where legally permissible, without having to obtain a court order.

- 1. This bill is unnecessary, as students' legal names are already required to be maintained in the Student Information System.**

Unless a statutory exception applies, a birth certificate is required upon admission to a Virginia public school and information from the document is entered into the student's permanent school record. Va. Code 22.1-3.1. A copy of the document may be retained by the school. This birth certificate will reflect the child's legal name at time of issuance.

The permanent school record is required to continue to contain the student's legal name throughout their time in public primary and secondary school. Legal names are required for standardized testing, student data reporting to Virginia Department of Education, and issuance of official secondary school transcripts (8 Va. Admin. Code 20-160-30). Schools are also required to issue a unique student identification number to each pupil, which guards against confusion if a name other than the student's full legal name is used on certain school records. See Va. Code 22.1-287.03. Both students' legal names and unique student

identification numbers are maintained in the Student Information System, regardless of what they go by in school. HB1434 is a solution in search of a problem.

**2. Requiring a Circuit Court order to update records of routine daily operation of the school system will unnecessarily burden and restrict parent and student decision-making for a wide range of families, not just those of transgender students.**

There is no Virginia statutory or regulatory definition of “education record” applicable in this context. However, the term is generally defined very broadly. See, e.g., 8 Va. Admin. Code 20-81-10 (“Education record” means those records that are directly related to a student and maintained by an educational agency or institution or by a party acting for the agency or institution.). As used in HB 1434, the term could be interpreted to encompass a broad array of records, such as: student library cards, pupil information for class rosters, student generated portfolios, etc. Records for which there is no need for a legal name.

While HB 1434 is intended to target transgender youth, it would impact a far wider range of public-school attendees. It would also limit students who routinely go by a nickname, their middle name, or another form of address. This bill would deny parents and students the ability to determine how all those youth would be referred to on school records, limiting their options to obtaining a permanent court order that will impact all areas of the youth’s life. It would also be practically impossible to implement, potentially spurring a massive flow of unnecessary filing with Circuit Courts around the state. Finally, this bill raises serious equity concerns, as not all families have access to legal counsel and the same ability to navigate the legal system.

**3. As applied to nonbinary and transgender students, this bill could violate the Federal Educational Rights and Privacy Act.**

Mandating students’ legal name on all “education records” may violate federal law governing educational privacy by requiring records unilaterally disclose a student as transgender. See the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g; 34 C.F.R. §§ 99.00 et seq.) Under FERPA, education records include all records “directly related to a student” and “maintained by an educational agency or institution.” 34 C.F.R. § 99.3. Parents have a right to “seek amendment of the student's education records that the parent or eligible student believes to be inaccurate, misleading, or *otherwise in violation of the student's privacy rights.*” 34 C.F.R. § 99.7(a)(2)(ii) (emphasis added). Federal courts have found that transgender status is “excruciatingly private and intimate” for those who wish to keep it private. *Powell v. Schriver*, 175 F.3d 107, 111 (2d Cir. 1999).

By potentially outing transgender students through including their legal name on widely disseminated education records for no educational purpose, HB1434 risks violating FERPA.

**4. This bill would cause serious harm to transgender and nonbinary students who have not chosen to or not yet updated their legal name.**

Finally, by requiring students' legal names be used on all education records, even when not required and serving no educational purpose, HB1434 imposes severe harm on transgender young people. A recent study documented that respecting transgender students' names and pronouns was associated with a 56% decrease in suicide attempts and a 29% decrease in suicidal thoughts.<sup>1</sup> Respecting transgender students' preferred name and pronouns lowers rates of depression and suicidal ideation, anxiety, and increases social acceptance.<sup>2</sup> Failing to do so creates emotional distress, worsened mood, and lower self-esteem.<sup>3</sup>

It is for these reasons we oppose House Bills 1434 and urge you to reject it.

Sincerely,

Wyatt Rolla  
Senior Transgender Rights Attorney  
ACLU of Virginia

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<sup>1</sup> Stephen T. Russell et al., Chosen Name Use Is Linked to Reduced Depressive Symptoms, Suicidal Ideation and Suicidal Behavior among Transgender Youth, 63 *J. Adolescent Health* 503, 505 (2018).

<sup>2</sup> Anna Martha Vaitses Fontanari et al., Gender Affirmation is Associated with Transgender and Gender Nonbinary Youth Mental Health Improvement, 7(5) *LGBT HEALTH* 237, 243-45 (2020).

<sup>3</sup> See, e.g., Camille Brown et al., "It Makes Such a Difference": An Examination of How LGBTQ Youth Talk About Personal Gender Pronouns, 32(1) *J. AM. ASS'N NURSE PRACS.* 70, 77-78 (Jan. 2020) and Kevin A. McLemore, Experiences with misgendering: Identity Misclassification of Transgender Spectrum Individuals, 14(1) *J. SELF & IDENTITY* 51, 68-70.