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Via electronic mail to Bradley.Burke@ed.gov

Bradley R. Burke
Regional Director
U.S. Department of Education
Office for Civil Rights
400 Maryland Avenue, SW
Washington, D.C. 20202-1475

RE: **OCR Complaint No. 11-25-1305**
Alexandria City Public Schools

Dear Mr. Burke:

I am writing on behalf of the Alexandria City School Board and Alexandria City Public Schools (collectively "ACPS") with respect to the Letter of Findings ("LOF") and proposed Voluntary Resolution Agreement ("VRA") issued by the U.S. Department of Education, Office for Civil Rights ("OCR") to ACPS on July 25, 2025. For a number of reasons, ACPS believes that the reasoning of OCR's LOF is flawed, and ACPS cannot enter into OCR's proposed VRA at this point given that OCR has indicated that it is "firm on [the] key terms" of revising School Board Policy JB in a manner that contradicts current law in Virginia, although ACPS certainly is willing to consider additional discussion and negotiation with OCR.

As you recall, following OCR's February 24, 2025 data request, ACPS submitted its response on March 24, 2025. OCR issued its 21-page LOF and draft VRA over four months later on July 25th, but demanded that ACPS respond just ten days later. Due to the magnitude of the issues raised, and particularly given the time of year, ACPS had sought ninety days to respond, consistent with OCR's own *Case Processing Manual*. In response to that request, you stated that OCR viewed certain items in its proposed VRA as non-negotiable, and provided only eleven more days for ACPS to respond.

The ACPS policy at issue was adopted more than a decade ago with widespread community support *and the express concurrence of OCR*. It has worked well since that time, and as ACPS indicated in its March 24th response, there have been zero reported complaints regarding this policy within the time examined by OCR. Moreover, that policy is consistent with current, directly-applicable binding legal precedent applying Title IX of the Education Amendments of 1972, 20 U.S.C. §1681 *et seq.* ("Title IX") issued by the U.S. Court of Appeals for the Fourth Circuit, including *Grimm v. Gloucester County School Board*, 972 F.3d 586, 619 (4th Cir. 2020), *cert. denied* 114 S. Ct. 2878 (2021). There is no dispute that the decisions of that court apply to ACPS.

OCR's LOF nonetheless concludes that *Grimm* somehow no longer applies. Accordingly, OCR's proposed VRA would require ACPS to rescind applicable portions of its

nondiscrimination policy, JB, and all related documents, and would mandate that ACPS adopt OCR's preferred definitions of "sex," "female," "male" and other terms across all its policies, practices and procedures.

ACPS prides itself on always being open to discussing ways to improve its policies and advance the educational interests of its students. That is true in this instance as well. Nonetheless, the analysis in OCR's LOF, and terms of its current proposed VRA, are not ones that ACPS could agree to adopt under these circumstances.

Fundamentally, ACPS is committed to following the law and protecting the members of the ACPS community; that means complying with governing law as it exists today. *Grimm* was decided by the Fourth Circuit in 2020, and the U.S. Supreme Court subsequently declined to review that decision. As indicated in ACPS' March 24, 2025 response to OCR referenced above, both the Fourth Circuit itself, and the lower courts within this Circuit, have consistently followed the *Grimm* decision for over five years.[1]

Legally, ACPS cannot agree with the analysis contained in the LOF, or the VRA's attempt to define transgender students out of existence. Insofar as the LOF relies upon precedents from other federal circuits, such as *Adams v. Sch. Bd. of St. Johns Cnty.*, 57 F.4th 791, 804 (11th Cir. 2022), those decisions are simply inapplicable. Instead, the decision in *Grimm* – holding that Title IX requires school divisions to provide transgender students with access to intimate facilities aligning with their consistent and persistent gender identity – squarely is.

Furthermore, the LOF's reliance on the U.S. Supreme Court's recent decision in *United States v. Skrmetti,* 605 U.S. ___ (2025) is misplaced. That decision concerned whether a Tennessee law banning certain medical procedures for minors violated the equal protection clause. *Skrmetti* did not involve schools or Title IX, nor did it deal with restrooms or other "intimate facilities." The Court there simply did not overrule or abrogate *Grimm*. Moreover, the LOF's conclusion that Title IX not only permits sex-segregated bathrooms and similar facilities, but compels them, is not supported by Title IX itself, nor any controlling case law. Indeed, were it clear that *Skrmetti* had indirectly overruled *Grimm*, there would have been no reason for the Supreme Court to have granted certiorari, as it recently did, to review the Fourth Circuit's decision in *B.P.J. by Jackson v. W. Va. State Bd. of Educ.*, No. 23- 1078 (4th Cir. 2024). The LOF predicts that the U.S. Supreme Court may at some point in the future issue a decision impacting the precedent in *Grimm*, but ACPS is responsible for following the law as it exists today.

Factually, insofar as the LOF suggests that ACPS' policy protecting transgender students has been the cause of "real and serious" harms, that claim is simply not accurate. As ACPS communicated in its response last spring, there were no formal or informal complaints regarding transgender students using intimate spaces last year. Instead, the experience of ACPS for more than a decade has been that schools have functioned well, and without disruption, and that students have felt valued and protected under Policy JB and its predecessors. In sum, the policy's practical approach to these complicated issues is working.

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[1] This includes the Fourth Circuit's recent order in *Doe v. State of South Carolina*, No. 25-1787 (August 12, 2025), enjoining enforcement of a ban against a transgender student using restrooms consistent with the student's gender identity.

While refinement or other revision to policy JB is always possible, any changes would necessarily need to reflect the values of the ACPS community, and be made with input from that community. OCR's LOF, and its timeline for response to the draft VRA, do not allow for such input.

Conclusion

ACPS remains open to discussing improvements that comply with the law and support and protect the ACPS community. OCR's LOF and current proposed VRA do neither.

In the LOF, OCR contends that "the writing on the wall is clear" with respect to *Grimm*, on the basis that the Supreme Court recently granted certiorari in *B.P.J.* and *Hecox v. Little*, 104 F.4th 1061, 1070 (9th Cir. 2024). OCR's views notwithstanding, ACPS cannot follow what OCR believes the law will be in the future, but rather must follow the law as it exists today. Since OCR believes that these cases may impact the precedent established by *Grimm*, ACPS respectfully suggests that OCR, rather than proceed with any threatened enforcement action at this time, pause such contemplated action in order to allow the U.S. Supreme Court to weigh in more definitively on the issues raised this matter.

Sincerely,

John F. Cafferky

cc: Dr. Melanie Kay-Wyatt, ACPS Division Superintendent
Robert M. Falconi, Esq. ACPS Division Counsel
Jakob T. Stalnaker, Esq.