

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION**

Patti Hidalgo Menders et al.,

Plaintiffs,

v.

Loudoun County School Board,

Defendant.

Case No. 1:21-cv-00669

PLAINTIFFS' MOTION FOR JUDICIAL NOTICE

MOTION

Pursuant to Federal Rule of Evidence 201, Plaintiffs hereby move the Court to take judicial notice of the below listed documents, which are a publicly available news article and two publicly available official policies of the Defendant that Plaintiffs obtained from Defendant's own website. These documents are public records and are attached to this motion as Exhibits A-C.

“A court may properly take judicial notice of ‘matters of public record’ and other information that, under Federal Rule of Evidence 201, constitute ‘adjudicative facts.’” *Just Puppies, Inc. v. Frosh*, 565 F. Supp. 3d 665, 704 (D. Md. 2021) (quoting *Goldfarb v. Mayor and City Council of Baltimore*, 791 F.3d 500, 508 (4th Cir. 2015)); *see also Gilbrook v. City of Westminster*, 177 F.3d 839, 858 (9th Cir. 1999) (“A trial court may presume that public records are authentic and trustworthy . . .”); *In U.S. ex rel. Modglin v. DJO Global Inc.*, 48 F. Supp. 3d 1362, 1381 (C.D. Cal. 2014) (“[A] court can take judicial notice of ‘[p]ublic records and government documents available from reliable sources on the Internet,’ such as websites run by governmental agencies.”) (citing cases); *Caldwell v. Univ. of N.M. Bd. of Regents*, No. CIV 20-0003 JB/JFR, 2023 U.S. Dist. LEXIS 111305, *119 n.28 (D.N.M. June 28, 2023) (finding courts may take judicial notice of a school's student policies contained on the school's official website).

Courts have often taken judicial notice of publicly available documents, including webpages and media reports. *See Finn v. Barney*, 471 F. App'x 30 (2d Cir. 2012); *Staehr v. Hartford Financial Services Group, Inc.*, 547 F.3d 406 (2d Cir. 2008) (affirming district court taking judicial notice of newspaper articles); *Fernandez v. Zoni Language Ctr., Inc.*, No. 15-cv-6066 (PKC), 2016 U.S. Dist. LEXIS 65310, at *8 (S.D.N.Y. May 18, 2016) (“Courts may also take judicial notice of information contained on websites where ‘the authenticity of the site has not

been questioned.”); *New York v. Meta Platforms, Inc.*, 66 F.4th 288 (D.C. Cir. 2023) (taking judicial notice of FTC’s quotation where archived webpage contained identical text and news articles quoted identical text).

Plaintiffs therefore ask that the Court take Judicial Notice of the following documents:

1. WTOP News Article by Scott Gelman, *How Loudoun Co. schools are responding to rise in hate incidents*, published June 10, 2023 9:18am (last accessed August 18, 2023 at <https://wtop.com/loudoun-county/2023/06/how-loudoun-co-schools-are-responding-to-rise-in-hate-incidents/>), which is attached as **Exhibit A**.
2. 2017 Loudoun County Public Schools Student Dress Code (last accessed August 18, 2023 at <https://www.lcps.org/cms/lib/VA01000195/Centricity/Domain/4891/StudentDressCode-Policy%208270.pdf>), which is attached as **Exhibit B**.
3. 2021 Loudoun County Public Schools Student Dress Code (last accessed August 18, 2023 at <https://www.lcps.org/cms/lib/VA01000195/Centricity/Domain/33551/Dress%20Code%208270%20-%202021.pdf>), which is attached as **Exhibit C**.

Dated: August 21, 2023

Respectfully Submitted,

/s/ Emily Rae

Emily Rae*

CA State Bar No. 308010 (admitted pro hac vice)

Reilly Stephens** (admitted pro hac vice)

Liberty Justice Center

440 N. Wells Street, Suite 200

Chicago, Illinois 60654

Telephone: 312-637-2280

Facsimile: 312-263-7702

erae@ljc.org

*Licensed in California and Texas

** Licensed in Maryland

Attorneys for Plaintiffs

/s/ Anthony J. Tamburro

Anthony J. Tamburro (VSB No. 96539)

SETLIFF LAW, P.C.

4940 Dominion Boulevard

Glen Allen, VA 23060

(804) 377-1260 (main number)

(804) 377-1280 (facsimile)

atamburro@setliffllaw.com

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on August 21, 2023, I E-Filed the foregoing through the Court's ECF system, which will send a copy to:

Stacy Haney, Esq.

Andrew Selman, Esq.

HANEY PHINYOWATTANACHIP PLLC

9201 Arboretum Parkway, Suite 160

Richmond, VA 23236

Shaney@haneyphinyo.com

Aselman@haneyphinyo.com

Attorneys for Defendant Loudon County School Board

/s/ Anthony J. Tamburro

Anthony J. Tamburro (VSB No. 96539)

SETLIFF LAW, P.C.

4940 Dominion Boulevard

Glen Allen, VA 23060

(804) 377-1260 (main number)

(804) 377-1280 (facsimile)

atamburro@setliffllaw.com

Attorneys for Plaintiffs

EXHIBIT A

NEWS ALERT: Maryland reports first malaria case in 40 years not linked to travel ✕

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This article is about **2 months** old

How Loudoun Co. schools are responding to rise in hate incidents

Scott Gelman | sgelman@wtop.com

June 10, 2023, 9:18 AM

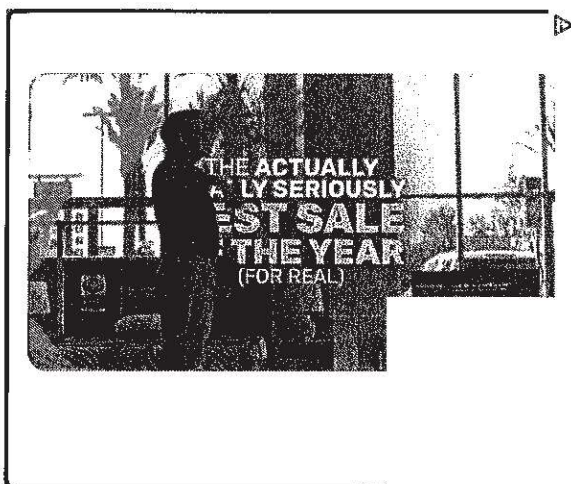

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School officials in Loudoun County, Virginia, say they’re offering training and professional learning and have hosted a series of sessions with the Anti-Defamation League in response to an increase in hate incidents.

At an equity committee meeting earlier this month, the school system said it recorded 294 incidents involving hate speech or racial slurs in the third quarter of the school year. As of May 31, the county reported 262 incidents in the fourth quarter, and 861 total incidents this school year.

It comes at a time when other D.C.-area school systems have also reported a rise in hate and bias incidents. In Montgomery County, Maryland, for example, Superintendent Monifa McKnight said the county is averaging about one hate incident per day this school year, triple the number it reported when compared to previous years and before the pandemic.



In Loudoun, staff members in the Division of Equity have visited schools to see what's going on at each campus and what can be done to support school administrators.

Members of the Social-Emotional Learning and Unified Mental Health teams have also had conversations with students, staff and families about "what these slurs and hate speech do to students as they are learning in school," according to Shahid Muhammad, the school system's supervisor of equity.

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"In the spirit of transparency and honesty, we really need to share that this is a very real problem," said Lottie Spurlock, the school system's director of equity, at the committee meeting. "The pervasive nature of it has people intrigued."

Across elementary, middle and high schools, Muhammad said incidents are happening in classrooms. But in middle schools, they're also occurring during PE class and on buses, and in high schools they also happen in hallways, at stadiums or gyms and on social media.

The most common type of incident involves use of the N-word, according to a school board presentation. That's happened 280 times across the county — 80 in elementary schools, 142 in middle schools and 58 in high schools.

The discipline process, Muhammad said, "is ongoing with consequences for students when they are warranted."

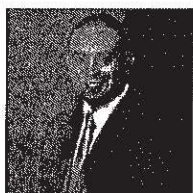
Some schools haven't reported any incidents, something Spurlock said is alarming.

“We’re going with what is reported, and we do recognize that everything’s not reported,” she said.

More information about hate incidents [in the county is available online.](#)

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Scott Gelman

Scott Gelman is a digital editor and writer for WTOP. A South Florida native, Scott graduated from the University of Maryland in 2019. During his time in College Park, he worked for The Diamondback, the school’s student newspaper.

✉ sgelman@wtop.com

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A RAPTIVE PARTNER SITE

EXHIBIT B

STUDENT DRESS CODE

All students who attend Loudoun County Public Schools are expected to dress appropriately for a K-12 educational environment. A student's attire should facilitate the participation in learning as well as the health and safety of students. This policy is intended to provide guidance for students, staff and parents.

A. Appropriate Student Attire. Students must wear clothing that is appropriate to a K-12 educational environment and that does not or is not likely to cause a substantial disruption that includes the following attire:

1. Clothing must cover the midriff.
2. Tops with straps greater than one inch wide.
3. Clothing that covers private areas should be opaque and appropriate undergarments must be worn.
4. Clothing that does not reveal undergarments and/or private areas.
5. Clothing should be suitable for all scheduled classroom activities where unique hazards exist.
6. Clothing that is required in specialized courses, such as sports uniforms or safety gear.
7. Clothing that includes head covering if worn for religious purposes, as a matter of safety, medical condition, or in connection with a school-sponsored program, activity, or event.
8. Faces should be clearly visible by other students and staff, as a reasonable measure of safety and security.
9. Clothing free from language that is profane or images that depict, advertise or advocate illegal, violent or lewd conduct, the unlawful possession or use of weapons, drugs, drug paraphernalia, alcohol, tobacco, marijuana or other controlled substances or are discriminatory.
10. Clothing and/or head coverings free from gang related or associated symbols, such as words or drawings that could pose a reasonable threat to the health or safety of any other student or staff.

STUDENT DRESS CODE

B. Responsibilities

1. Student Responsibility. Students are responsible for complying with the division dress code during school hours and school sponsored activities.
2. Staff Responsibility. Staff are responsible for communicating and equitably enforcing the division dress code during school hours and school-sponsored activities.
3. Parent Responsibility. Parents or guardians are responsible for ensuring student compliance with the division dress code. Parents or guardians of students requiring accommodation for religious beliefs, disabilities, or other good causes should contact the principal or principal's designee.

C. Enforcement

1. Enforcement of this policy is the responsibility of the school administration.
2. Enforcement must be reasonably discreet, equitable, and gender neutral in implementation.
3. Enforcement should include options for reasonable remediation of the infraction that demonstrates respect and where possible, minimizes loss of instructional time.
4. Enforcement may include disciplinary actions that are consistent with other discipline policies and sufficiently escalatory to encourage compliance.

D. Appeals. In accordance with policy §8-26 parents or guardians may appeal a disciplinary action by notifying the office of the appropriate person to whom the appeal is made.

[Former Policy 8-33]
Adopted: 8/11/71
Revised: 6/22/93, 12/13/11, 6/27/17
Current Revision: 8/8/17

EXHIBIT C

STUDENT DRESS CODE

Loudoun County Public Schools' student dress code supports equitable educational access and is written in a manner that does not reinforce stereotypes and that does not reinforce or increase marginalization or oppression of any group based on race, color, national origin, caste, religion, sex, pregnancy, childbirth or related medical conditions, sexual orientation, gender identity, gender expression, marital status, disability, age, or genetic information.

The student dress code supports our goal of inspiring students to learn while leaving primary decisions around student clothing and style to students and their parents or guardians. Our expectation is that parents and guardians are responsible for ensuring student compliance with the school's dress code, and students are responsible for knowing the student dress code and for complying during school hours and school activities.

A. Values

Our values are:

1. All students should be able to dress comfortably for school and engage in the educational environment without fear of or actual unnecessary discipline or body shaming.
2. A student's choice of clothing should not be blamed as a distraction to the learning environment, apart from specific violations of the dress code detailed in this policy.
3. Student dress code enforcement should not result in unnecessary barriers to school attendance.
4. School staff should be trained and able to use student/body-positive language to explain the code and to address code violations.
5. Teachers should focus on teaching without the additional and often uncomfortable burden of dress code enforcement.
6. Reasons for conflict and inconsistent and/or inequitable discipline should be minimized whenever possible.

B. Appropriate Student Attire

1. Students must wear:

STUDENT DRESS CODE

- a. a shirt;
 - b. a bottom: pants, sweatpants, shorts, skirt, dress, or leggings;
 - c. shoes; and
 - d. clothing required by specialized courses or activities, such as sports uniforms or safety gear. Students must dress appropriately for gym class, wearing clothing and footwear that permits for full and safe participation in all activities.
2. Students may wear:
- a. hats, including religious headwear;
 - b. hoodie sweatshirts (hoods must be lowered during instructional time);
 - c. fitted pants, including leggings, yoga pants, and "skinny jeans";
 - d. pajama pants and pajama shirts;
 - e. ripped jeans, as long as underwear is not exposed;
 - f. shirts with straps;
 - g. athletic attire;
 - h. clothing with commercial or athletic logos; and
 - i. any religiously or ethnically specific or significant clothing, head covering, or hairstyle, including hijabs, yarmulkes, headwraps, braids, locs, and cornrows.
3. Clothing and accessories in violation of dress code are those that:
- a. depict or promote illegal, violent, or lewd conduct;
 - b. depict or promote the unlawful possession or use of weapons, alcohol, tobacco, drugs, drug paraphernalia, or other controlled

STUDENT DRESS CODE

- substances;
- c. expose private parts;
- d. expose underwear (however, visible waistbands or straps on undergarments worn under other clothing are not a violation);
- e. are helmets or headgear that obscures the face (except as a religious observance or if medically necessary);
- f. are bathing suits;
- g. include language, slogans, profanity, symbols, icons, or images that are reasonably foreseeable to cause a material and substantial disruption or invade the rights of others and that amount to hate speech, are highly offensive or threatening to others, or impede or distract from the Board's mission of instilling values necessary or appropriate for polite civil discourse or political expression in a school context, social tolerance, nondiscrimination, self-awareness and sensitivity to the feeling of others. For example, displays of certain symbols such as Confederate or Swastika images are perceived by many as racially hostile, are associated with racial prejudice, have been a source for conflict among students, and could result in hatred, ill will, and emotional trauma that are all inappropriate in the school context.

C. Dress Code Enforcement and Responsibilities

1. Staff are responsible for communicating and equitably enforcing the division dress code during school hours and school-sponsored activities. To ensure effective and equitable enforcement of this dress code, school staff shall enforce the dress code consistently and in a viewpoint neutral manner using the requirements below. Discussion about dress code violations shall be held privately and maintain the dignity of the student.

- a. Students will only be removed from spaces, hallways, or classrooms as a result of a dress code violation as outlined above. Enforcement should provide options for reasonable remediation of the infraction that demonstrates respect and minimizes loss of instructional time.

STUDENT DRESS CODE

- b. No student should be disproportionately affected by dress code enforcement because of their gender or any other protected class such as race, sex, gender identity, gender expression, sexual orientation, ethnicity, religion, cultural observance, household income, or body type/size.
- c. Enforcement must be reasonably discreet. Students should not be shamed or required to undress or display their body in front of others (students, parents, or staff) in school. "Shaming" includes, but is not limited to: kneeling or bending over to check attire fit; measuring straps or skirt length; asking students to account for their attire in the classroom or in hallways in front of others; calling out students in spaces, in hallways, or in classrooms about perceived dress code violations in front of others; accusing students of "distracting" other students with their clothing.
- d. Enforcement may include disciplinary actions that are consistent with other discipline policies and sufficiently escalatory to encourage compliance, however, violations of the dress code should generally be treated as minor infractions unless repeated or egregious in nature (e.g. streaking, hate speech).

2. Students are responsible for complying with the division dress code during school hours and school sponsored activities. Students who feel they have been subject to discriminatory enforcement of the dress code should contact the Office of School Administration.

3. Parents or guardians are responsible for ensuring student compliance with the dress code. Parents or guardians of students requiring accommodation not otherwise covered in this policy should contact the school principal or principal's designee.

[Former Policy 8-33]
Adopted: 8/11/71
Revised: 6/22/93, 12/13/11, 6/27/17, 8/8/17
Current Revision: 9/14/21

Legal Ref.: Code of Virginia § 22.1-79.2

Cross Ref: Policy 8215 In-School Disciplinary Measures