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Attorney General-Elect Jason Miyares
1112 Laskin Rd, Ste A
Virginia Beach, VA 23451

Dear Attorney General-Elect Miyares,

On behalf of the thousands of families of the Fairfax County Parents Association (FCPA), we thank you for committing to protect the rights of all Virginian children and families. Having evolved out of the movement to open schools for in person learning during the 2020-2021 school year, the FCPA is a bipartisan organization dedicated to ensuring that the publicly-funded school system prioritizes the rights and interests of our community's students. We look forward to working with the Virginia Department of Education (VDOE) under incoming Secretary of Education Aimee Guidera to give our children the world-class education that Governor-Elect Youngkin expects.

However, some actions taken by VDOE or local school divisions over the past year have been so egregious that they have denied Virginia's students the protections guaranteed by the Virginia and United States Constitutions. Government officials who treat school system employees and boards as the primary stakeholders have violated the rights of thousands of students to equal protection and due process of law. We highlight three significant issues for your consideration and respectfully request that your office ensure that justice is done for our children.

- (1) First, investigate school divisions that systematically violate the *Virginia Freedom of Information Act (VFOIA)* and state open meeting laws. In Fairfax County, public school board meetings have largely become performative votes with predetermined outcomes and readings of prepared statements. The school board instead discusses the public business in asynchronous meetings conducted by email or text message. VFOIA requests for these electronic discussions, if we know about them at all, are rebuffed as too

vague, burdened by thousands of dollars of fees, or hampered by over-enthusiastic redactions. The school system knows our only option is to fight through these obstacles in court; unlike FCPS, parents do not have hundreds of thousands of taxpayer dollars to spend every month on lawyers. We need state-level legal resources to protect the ready access to information mandated by state law.

- (2) Second, hold school systems to the limits of their authority. The government of the Commonwealth has a shameful tradition of using Article VIII, Section 7 of the Virginia Constitution to turn a blind eye to local wrongdoing. Congress intended funds from the American Rescue Plan to provide additional school services to students devastated by virtual learning, yet when Arlington Public Schools spent over half of their budget on a virtual academy serving 3% of students, or when Fairfax County Public Schools diverted over \$40 million into paying teachers to do paperwork, VDOE shrugged. When Albemarle County barred students from school for having a disability that prohibits them from wearing a mask, despite the exception for these students in his Executive Order, Governor Northam did nothing. When Fairfax County voted in 2019 to build an elementary school to help disadvantaged students at a Title 1 school get out of moldering trailers, but the school board diverted those funds, the Virginia's Comptroller didn't ask any questions. In *Tabler v. Fairfax County*, our Supreme Court clearly stated that "local governing bodies have only those powers that are expressly granted, those that are necessarily or fairly implied from expressly granted powers and those that are essential and indispensable." Elected school boards must not be above that law.

- (3) Finally, readjudicate state special education complaints where VDOE had their thumb on the scale. Data from the U.S. Department of Education (US DOE) shows Virginia is one of the worst states in the nation to be a special education student. When school divisions deny students access to services they need to receive a free appropriate public education, the state is three times as likely to side with the school division than the national average, and twice as likely to dismiss the student's complaint without even investigating it. To avoid their legal obligation to oversee local education agencies, the Virginia Department of Education has created an extralegal standard called "functionally unavailable settings or services." If a school system writes an administrative policy and refuses any modification for special education, such as in-person learning during the 2020-2021 school year, then VDOE declares the service "functionally unavailable" and refuses to require reasonable accommodation. Despite the US DOE Office for Civil Rights' long-standing position that special education students are entitled to compensatory services if a natural disaster makes a setting or service inaccessible, VDOE has declared in writing their make-believe rule of "functionally unavailable" trumps federal and state law. The situation in Virginia is so reprehensible that US DOE publicly declared "Completely ignoring credible allegations of [school system] noncompliance is not a reasonable method of exercising the State's general supervisory responsibilities." These students

deserve better, and it is our hope the Office of the Attorney General for the Commonwealth can assist.

On behalf of the thousands of families in Fairfax County who put our children first, thank you for giving consideration to our views.

All the best for the new year,

Fairfax County Parents Association

Policy Committee and Board of Directors