



Highlights from August 19, 2023 Board of Directors' Special Meeting

Action taken after Executive Session

We received a demand letter (see below) from the ACLU of Colorado regarding our resolution on the Privacy & Protection of Students and Parental Rights. At this time there is no imminent threat of litigation. However, the Board response is to create a Legal Affairs Sub-Committee comprised of Ryan Graham and Karen Hoida. Further information and a more detailed board communication will be provided to the community in the coming weeks.

What's coming up?

- **September Board/Parent Café Chat**

Board members Craig Carle and Lindsay Clinton invite you to join them at Serranos Coffee on September 6th from 8:30-9:30 am at Serranos Coffee Company. Please RSVP here: [Sept 6 RSVP](#).

- MA Board of Directors Regular Meeting: September 14th at **6:30 pm** in the East Campus Gym
 - Public Comments are welcome related to agenda or non-agenda items. You must attend in person and sign-up on the public comment sheet before 6:30 pm. Meetings are recorded and uploaded to our YouTube Channel: [Monument Academy Charter School](#). For live streams, click on "live." For meetings that were recorded and uploaded, click on "videos."



AMERICAN CIVIL LIBERTIES UNION

Colorado

Deborah Richardson, Executive Director
Tim Macdonald, Legal Director

August 16, 2023

Brad Miller
Miller Farmer Carlson Law
5665 Vessey Rd.
Colorado Springs, CO 80908

VIA E-Mail: brad@millerfarmercarrlson.com

Re: Unlawful actions of Monument Academy and its school board

Dear Mr. Miller,

From your public statements, I understand that you represent Monument Academy and its school board. I am writing to address actions taken by your clients that undermine the safety and well-being of transgender, gender nonconforming, and nonbinary students and flout multiple state and federal laws. The ACLU of Colorado is committed to protecting all Colorado students' rights and, based on recent reports, we are deeply troubled with the actions that Monument Academy has taken.

First, we understand that Monument Academy has refused to provide students access to the restroom consistent with their gender. This is unlawful. Colorado's Anti-Discrimination Act ("CADA") forbids schools, as places of public accommodation, from discriminating against anyone on the basis of sex, sexual orientation, gender identity, or gender expression. C.R.S. § 24-34-601. In particular, Monument Academy is required to allow individuals to use restrooms that are consistent with their gender identity. 3 CCR 708-1 (Rule 81.9). Excluding a student from the restroom that aligns with their gender identity violates not only CADA, but also federal prohibitions on discrimination under Title IX and the U.S. and Colorado Constitutions.

Second, we understand that Monument Academy has enforced its dress codes in a way that impermissibly treats students differently based on sex, forces them to conform to sex stereotypes, and has been used to deny students the ability to dress and express themselves in accordance with their gender and gender identity. As

you know, this too is unlawful. CADA prevents schools from requiring any student to dress or groom in a manner inconsistent with their gender identity. C.R.S. § 24-34-601; 3 CCR 708-1 (Rule 81.9). Doing so not only violates CADA and federal prohibitions on discrimination in schools, but also students' constitutional rights to freedom of expression.

We also are aware that Monument Academy's board recently adopted a resolution signaling its open hostility to transgender, gender nonconforming, and nonbinary students, as well as to our state and federal nondiscrimination laws.¹ To be clear, given the resolution's content, its disclaimer that Monument Academy does not discriminate and "welcomes" all students regardless of sex, gender expression, and gender identity is an empty declaration. The resolution reads as an advertisement of the ways Monument Academy intends *not to* welcome students who are transgender, nonbinary, or gender nonconforming to the district.

First, the resolution sets up burdensome roadblocks to transgender and gender-diverse students' ability to attend school on a full and equal basis with their peers. These discriminatory prerequisites have no basis in law.

Second, the resolution announces the board's intent to out any gender diverse student to the "appropriate MA parent community and MA constituency," (in violation of various student privacy laws) and endorses the ostracism of any such student by encouraging others to avoid sharing facilities with them.

Finally, the resolution gives power to the school over decisions that belong to the students, their families, and medical professionals by prescribing the inflexible ways a student must present and express themselves in order for Monument Academy to accept aspects of their identity at school. (*See, e.g.*, Resolution at 2 (mandating "that any . . . [transgender] student must conform to the dress code of the gender that they now identify or express as with no vacillation."); *id.* (mandating that any gender-diverse student "transition with a change of name and change of gender" in school software and records)). Remarkably, these mandates appear in the same document as the board's proclaimed belief that schools *do not* have the right to make decisions concerning the care, custody, and control of children. *Id.* at 1.

The board is totally unqualified to prescribe the course of a student's transition or the contours of permissible gender expression. Any attempt at enforcing the categorical mandates in the board's resolution will violate the law.

¹ Monument Academy School Board, Resolution Regarding the Privacy and Protection of Students as it Relates to Colorado S.B. 08-200 and Colorado H.B. 21-1108 (June 27, 2023), https://www.monumentacademy.net/wp-content/uploads/2023/06/SKME9C1A323062720320.pdf?fbclid=IwAR3rp8ALJwb1A_wSfAnVBpQeyz55Z5-4NYfaD1EgtDGq8pxIV0d89eqy9TM.

In sum, Monument Academy's actions evince an intent to make life intolerable for transgender, nonbinary, and gender-diverse students. The school has already violated numerous laws and is vulnerable to suit.

Our priority is to ensure that future students and families of Monument Academy are not subjected to the same mistreatment as prior families. With the start of a new academic year upon us, Monument Academy has a chance to correct its practices and comply with state and federal law. We urge Monument Academy to begin to redress the hostile school environment it has created. Meaningful steps would include, at a minimum, retracting the harmful June 27, 2023, resolution and committing to comply with the requirements of Colorado and federal law. Please provide a substantive response to this letter by August 31, 2023. We reserve all rights to file necessary legal action to ensure compliance with Colorado and federal law.

Sincerely,

Timothy R. Macdonald

Timothy R. Macdonald
Legal Director, ACLU of Colorado