

Compliance with Va. Code § 22.1-23.3

Virginia Code § 22.1-23.3, which was enacted by the General Assembly in 2020, requires action by both the Virginia Department of Education (DOE) and school boards.

The statute requires the DOE to develop model policies concerning the treatment of transgender students in public schools. The DOE's model policies were required to address:

- compliance with applicable nondiscrimination laws;
- maintenance of a safe and supportive learning environment free from discrimination and harassment for all students;
- prevention of and response to bullying and harassment;
- maintenance of student records;
- identification of students;
- protection of student privacy and the confidentiality of sensitive information;
- enforcement of sex-based dress codes; and
- student participation in sex-specific school activities and events and use of school facilities. Activities and events do not include athletics.

The DOE's *Model Policies for the Treatment of Transgender Students in Public Elementary and Secondary Schools* were made available for public comment, as required by law, in late December. The DOE received over 9,000 comments during the public comment period. The final version of the document was distributed to local school divisions via Superintendent's Memo 085-21 on April 2, 2021

https://www.doe.virginia.gov/administrators/superintendents_memos/2021/085-21.pdf

Virginia Code § 22.1-23.3 requires school boards to adopt policies that are consistent with the DOE's *Model Policies* by the beginning of the 2021-2022 school year.

Excerpts from the DOE's *Model Policies*

"[W]hile the terminology *transgender* is used throughout this document, it should be interpreted to include gender-expansive, nonbinary, and gender nonconforming individuals who do not identify on the cisgender binary." (DOE *Model Policies*, p 8).

"Transgender: A self-identifying term that describes a person whose gender identity is different from their sex assigned at birth. . . Note that there is a wide range of gender identities in addition to transgender male and transgender female, such as nonbinary." (DOE *Model Policies* p. 7).

"The purpose of this document is to present model policies for use during the local school board's policy development process. Given the broad range of topics to be

addressed by local school boards relating to the treatment of transgender students, it is likely that multiple policies will be needed in different categories rather than a single policy. Existing policies and regulations may also need to be expanded or clarified to be more gender-inclusive or to emphasize specific protections for transgender, nonbinary, and gender-expansive students. This document provides information, best practices, guidance, procedures, and standards for each topic, and model policies are highlighted and distinctive from the discussions. Local school boards may adopt example language in the model policies or use it as a guide to draft policies that meet the unique needs of their school division.” (DOE *Model Policies* p. 9).

Topics listed in Va. Code § 22.1-23.3 and VSBA policies that address them

Compliance with applicable nondiscrimination law

AC Nondiscrimination

“The BLANK School Board is committed to nondiscrimination with regard to . . . gender identity . . . This commitment prevails in all of its policies and practices concerning staff, students, [and] educational programs and services.”

JB Equal Educational Opportunities/Nondiscrimination

“Equal educational opportunities are available for all students, without regard to . . . gender identity . . . Educational programs are designed to meet the varying needs of all students.”

JFHA/GBA Prohibition Against Harassment and Retaliation

“The BLANK School Board is committed to maintaining an educational environment . . . that is free from harassment. In accordance with law, the Board prohibits harassment . . . on the basis of . . . gender identity.”

“It is a violation of this policy for any student or school personnel to harass a student . . . Further, it is a violation of this policy for any school personnel to tolerate harassment”.

Maintenance of a safe and supportive learning environment free from discrimination and harassment for all students

In addition to policies AC Nondiscrimination, JB Equal Educational Opportunities/Nondiscrimination, and JFHA/GBA Prohibition Against Harassment and Retaliation, which are discussed above, the following policies address this topic.



AD Educational Philosophy

“BLANK School Board is committed to providing equal opportunity for every student to achieve intellectual, social, emotional and physical growth . . .

“BLANK School Board:

- . . .
- treats all members of the school community equitably and with respect”.

AE School Division Goals and Objectives

“The school division is committed to excellence in education, equality of educational opportunity, and the recognition of each student's individuality. . . Programs emphasize diagnostic and prescriptive instruction, allowing an individual approach to each student's learning style and educational needs.”

CH Policy Implementation

“The School Board authorizes the superintendent to create and update regulations necessary to carry out the policies adopted by the Board.”

IGBC Parent and Family Engagement

“The BLANK School Board recognizes that the education of each student is a responsibility shared by the school and the student's family.”

IJ Guidance and Counseling Program

“Each school provides the following guidance and counseling services to all students:

- . . .
- Personal/social counseling which assists a student to develop an understanding of themselves, the rights and needs of others, how to resolve conflict and to define individual goals, reflecting their interests, abilities and aptitudes. Information and records of personal/social counseling will be kept confidential and separate from a student's educational records and not disclosed to third parties without prior parental consent or as otherwise provided by law. Parents may elect, by notifying their child's school in writing, to have their child not participate in personal/social counseling.

“No student is required to participate in any counseling program to which the student's parents object. . . .”



JFC Student Conduct

Policy JFC requires maintenance of a safe and supportive learning environment by prohibiting bullying, harassment, hazing, intentionally injuring others, and making threats. In addition, the policy requires the superintendent to write Standards of Student Conduct to address other conduct that might be inconsistent with a safe and supportive learning environment.

Prevention of and response to bullying and harassment

GCL Professional Staff Development

“The School Board provides professional development designed to education school board employees about bullying and the need to create a bully-free environment.”

IGAI Character Education

“The [character education] program . . . addresses the inappropriateness of bullying.”

JFC Student Conduct

The policy prohibits bullying and harassment.

Maintenance of student records

JO Student Records

“The BLANK School Board maintains accurate and complete records for every student enrolled in the public schools in accordance with all federal and state laws.

“The superintendent . . . is responsible for the collection of data, record maintenance and security, access to, and use of records, confidentiality of personally identifiable information, dissemination of information from records, and destruction of records . . . The superintendent also provides for notification of all school division personnel of policy and procedures for management of education records and notification of parents and students of their rights regarding student records”.

JOA Student Transcripts

“Secondary school transcripts contain information as specified by the Virginia Board of Education.”

Identification of students

DOE *Model Policies*, p. 12, says “[a]ll school employees shall treat all students with respect and dignity.”

Policies AC Nondiscrimination, AD Educational Philosophy, AE School Division Goals and Objectives, and CH Policy Implementation, discussed above, address this topic.

Protection of student privacy and confidentiality of sensitive information

Policies AC Nondiscrimination and AD Educational Philosophy, discussed above, address this topic.

Enforcement of sex-based dress codes

Dress codes are normally addressed in regulations from the superintendent rather than policy enacted by the school board.

Policies AD Educational Philosophy, AE School Division Goals and Objectives, JB Equal Educational Opportunities/Nondiscrimination, JFHA/GBA Prohibition Against Harassment and Retaliation and CH Policy Implementation, discussed above, discuss this topic.

Student participation in sex-specific activities and events and use of school facilities.

In addition to the policies AC Nondiscrimination, AD Educational Philosophy, AE School Division Goals and Objectives, CH Policy Implementation, and JB Equal Educational Opportunities/Nondiscrimination discussed above, the following policies also address this topic.

IA Instructional Goals and Objectives

The school board “develops and implements a program of instruction . . . that meets or exceeds the requirements of the Board of Education”.

IICA Field Trips

“Field trips are off-campus instructional activities.

“Trips are approved by the superintendent or superintendent’s designee pursuant to regulations developed by the superintendent.”



IGDA Student Organizations

“Student organizations shall not engage in any activity which is contrary to law, division policy, or school rules . . . or which would adversely affect the health, safety or welfare of any students.”

JFCB Sportsmanship, Ethics and Integrity

“The School Board recognizes the value of extracurricular activities in the education process and the values that students develop when they have the opportunity to participate in an organized activity outside of the traditional classroom.

“Participants and responsible adults involved in School Board approved extracurricular activities are expected to demonstrate the same level of responsibility and behavior at practice and competitions as is expected in the classroom.”