

# **Model Policies for the Treatment of Transgender Students in Virginia’s Public Schools**



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## **Acknowledgements**

The Virginia Department of Education (VDOE) would like to extend appreciation to those who provided input and offered expertise throughout the development of these model policies.

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## Introduction

The **Model Policies for the Treatment of Transgender Students in Public Elementary and Secondary Schools** document was developed in response to House Bill 145 and Senate Bill 161, enacted by the 2020 Virginia General Assembly:

“1. That the Code of Virginia is amended by adding a section numbered [22.1-23.3](#) as follows § [22.1-23.3](#). Treatment of transgender students; policies.

A. The Department of Education shall develop and make available to each school board model policies concerning the treatment of transgender students in public elementary and secondary schools that address common issues regarding transgender students in accordance with evidence-based best practices and include information, guidance, procedures, and standards relating to:

1. Compliance with applicable nondiscrimination laws;
2. Maintenance of a safe and supportive learning environment free from discrimination and harassment for all students;
3. Prevention of and response to bullying and harassment;
4. Maintenance of student records;
5. Identification of students;
6. Protection of student privacy and the confidentiality of sensitive information;
7. Enforcement of sex-based dress codes; and
8. Student participation in sex-specific school activities, events, and use of school facilities.

Activities and events do not include athletics:

B. Each school board shall adopt policies that are consistent with but may be more comprehensive than the model policies developed by the Virginia Department of Education (VDOE) pursuant to subsection A:

1. That the Virginia Department of Education shall develop and make available to each school board model policies pursuant to subsection A of § [22.1-23.3](#) of the *Code of Virginia*, as created by this act, no later than December 31, 2020.
2. That each school board shall adopt policies pursuant to subsection B of § [22.1-23.3](#) of the *Code of Virginia*, as created by this act, no later than the beginning of the 2021–2022 school year.”

In June 2020, an advisory committee was formed to review model policies, local policies throughout the nation, and resources pertaining to the treatment of transgender students in public schools. The committee included school-based personnel representing diverse Superintendent’s Regions and disciplines, representatives from state professional associations, parent representatives, student representatives, representatives from advocacy organizations, and specialists from the Virginia Department of Education (VDOE). The development of these model policies is a result of consultation and collaboration with multiple stakeholders throughout the Commonwealth with a variety of backgrounds and expertise.

## Background

### Terminology

Transgender and nonbinary students may use different terms to describe their lives and gender experiences. While terminology and language differ and evolve based on region, language, race or ethnicity, age, culture, and other factors, for purposes of discussion in this document, the following terms are used:

- **Cisgender:** An adjective describing a person whose gender identity corresponds with the gender society typically associates with the sex they were assigned at birth.
- **Gender:** A set of social, psychological, and emotional traits that classify an individual as typically masculine or feminine, although the social construct of gender may be more diverse across a continuum rather than as a binary system.
- **Gender-expansive/gender-diverse/gender-fluid/gender-nonbinary/agender/gender queer:** Terms that convey a wider, more inclusive range of gender identity and/or expression than typically associated with the social construct of a binary (two discrete and opposite categories of male and female) gender system.
- **Gender Expression:** The manner in which a person represents or expresses their gender identity or role to others, often through appearance, clothing, hairstyles, behavior, activities, voice, or mannerisms. Gender expression may change over time and from day-to-day and is not necessarily related to the person's gender identity.
- **Gender Identity:** A person's internal sense of their own identity as a boy/man, girl/woman, another gender, no gender, or outside the male/female binary. Gender identity is an innate part of a person's identity and can be the same or different from society's expectations with the sex they were assigned at birth.
- **Gender Nonconforming:** A person who does not conform to gender stereotypes. Their gender expression differs from society's expectations associated with the sex assigned at birth. Being gender nonconforming is distinct from being transgender, though some transgender people may consider themselves to be gender nonconforming.
- **Gender Transition:** The process of shifting toward living according to their gender identity, rather than the sex assigned at birth. Transitions can be at different levels, including social transition, such as new names, pronouns, appearance, and clothing. Some people may undergo medical transitions, such as hormone therapy or surgery.
- **LGBTQ+:** An acronym for "lesbian, gay, bisexual, transgender, queer/questioning, and others."
- **Nonbinary:** a term used to refer to people whose gender identity is not exclusively male or female, including those who identify with a different gender, a combination of genders, or no gender. Nonbinary may be considered a subset of transgender or a distinct

identity. Other similar terms may include genderqueer, gender fluid, agender, or Two-Spirit (for Native American Indian, Alaska Native, First Nation, or Indigenous communities).

- **Sex Assignment:** A label, generally “male” or “female,” that is typically assigned at birth on the basis of a cluster of physical and anatomical features. Intersex refers to someone whose combination of chromosomes, gonads, hormones, internal sex organs, and genitals differs from the two expected patterns of male or female.
- **Transgender:** A self-identifying term that describes a person whose gender identity is different from their sex assigned at birth. A **transgender girl** is a girl who was presumed to be male when she was born, and a **transgender boy** is a boy who was presumed to be female when he was born. Note that there is a wide range of gender identities in addition to transgender male and transgender female, such as nonbinary.

### **Related Laws**

A brief summary of federal and state laws is included for informational purposes and to aid in the development of model policies for the treatment of transgender students. The summary provided in this section does not constitute legal interpretation nor advice. Given the changing legal landscape, including on-going litigation and different interpretations, school divisions should consult with their school board attorney.

*First Amendment:* The First Amendment protects freedom of speech and expression. Schools may not prevent students from expressing their identity.

*Equal Protection Clause of the 14th Amendment:* This clause guarantees every citizen equal protection under the law. It protects LGBTQ+ youth in schools from unfair or discriminatory school actions.

*Title VII of the Civil Rights Act of 1964:* The US Supreme Court ruled in June 2020 that this federal law includes protection based on sexual orientation and gender identity in its prohibition of employment discrimination.

*Title IX of the Education Amendments of 1972:* Title IX is a federal law that prohibits schools that receive federal financial assistance from limiting or denying a student’s participation in any school program on the basis of sex. This may be understood to prohibit discrimination, including sexual harassment, based on sex stereotypes, sexual orientation, and gender identity or transgender status.

*Equal Access Act:* This is a federal law that requires public secondary schools to provide equal access to extracurricular clubs. Schools must treat all clubs the same and use school resources in the same way, including for Gay-Straight Alliance or Gender-Sexuality Alliance (GSA) clubs.

*Family Educational Rights and Privacy Act (FERPA):* This is a federal law that protects the privacy of student educational records. It prohibits the improper disclosure of personally identifiable information from student records. Information relating to gender identity or sexual orientation may constitute personally identifiable information.

*Health Insurance Portability and Accountability Act of 1996 (HIPAA)*: This is a federal law that mandates the privacy protections for individually identifiable health information. Demographic information such as gender may be considered protected health information under HIPAA.

*Conversion Therapy Prohibited*: § [54.1-2409.5](#). This Virginia state law prohibits licensed professionals from engaging in conversion therapy with youth under 18 years of age. Note that conversion therapy is opposed by most major professional organizations such as the American Psychiatric Association (APA, 2018), the American Counseling Association (ACA, n.d.), and the American Medical Association (AMA, 2019).

*Virginia Values Act*: This state law expands the *Virginia Human Rights Act* to prohibit discrimination in employment, housing, and public accommodations on the basis of sexual orientation and gender identity.

*Virginia Anti-Bullying legislation*: Virginia school boards are required to include bullying prevention as a part of character education (§ 22.1-208.01 of the *Code of Virginia*). In addition, school boards are expected to include bullying as a prohibited behavior in their student codes of conduct (§ 22.1-279.6.D of the *Code of Virginia*) and to implement policies and procedures to educate school board employees about bullying and the need to create a bully-free environment (§ 22.1-291.4 of the *Code of Virginia*). Finally, §§ 22.1-276.01 and 22.1-279.6 of the *Code of Virginia* requires including standards for reducing bias and harassment in the enforcement of any code of student conduct.

*Virginia Identification Documents legislation*: §§ 46.2-323, 46.2-341.12, 46.2-345, and 46.2-345.2 of the *Code of Virginia* require the Department of Motor Vehicles to offer any applicant the option to mark “male,” “female,” or “non-binary” when designating the applicant’s sex on an application for a driver’s license or special identification card. Additionally, §§ 32.1-261 and 32.1-269 of the *Code of Virginia* require the State Registrar to issue a new certificate of birth to show a change of sex upon request and, if a certified copy of a court order changing the person’s name is submitted, to include the person’s new name.

### **Guiding Principle to Support Transgender Students**

The Virginia Department of Education continues to be committed to working with school divisions to ensure a positive, safe, and nurturing learning environment for all students. It is important that as education leaders we affirm our commitment to advancing equity in Virginia’s public schools. Efforts to advance equity priorities include developing a culturally competent workforce of educators, closing opportunity and achievement gaps among marginalized student groups, increasing access to high quality early learning opportunities, and maximizing the potential of every Virginia student. The key guiding principle of the model policies is that all children have a right to learn, free from discrimination and harassment.

For many people, their gender identity matches their sex assigned at birth. For others, their gender identity does not necessarily correspond to the sex assigned at birth, where the gender identity may be one in a range such as transgender, nonbinary, or gender-expansive. Gender identity is considered an innate characteristic that most children declare by age five to six (Lamb & Lerner, 2015). In 2020, the American Psychological Association (APA) and National



Association of School Psychologists (NASP) declared in a resolution that “all persons, including children and adolescents who are diverse in their sexuality and gender identities, expression, and/or presentation, have the inherent human right to equal opportunity and a physically and psychologically safe environment within all institutions.” The American Academy of Pediatrics (2018) also acknowledged that, “variations in gender identity and expression are normal aspects of human diversity.”

School divisions are encouraged to develop comprehensive policies, regulations, guidance and implementation plans to minimize social stigmatization for such students and maximize opportunities for social integration so that all students have an equal opportunity to attend school, be engaged, and achieve academic success. This process should be informed by the needs of students, and the strongest policies are developed when they include student participation. A recent study found that inclusive policies that focus on sexual orientation and gender identity were associated with more supportive school environments for LGBTQ+ youth and had a direct association with less truancy (Day, Ioverno, & Russell, 2019). While 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.

To comply with HB 145 (2020) and SB 161 (2020), local school boards shall adopt policies consistent with model policies contained in this document no later than the 2021-2022 school year. They may adopt more comprehensive policies than these model policies relating to the treatment of transgender students. The goal is to develop policies that are informed by the law and ensure that all students, including transgender students, have safe, supportive, and inclusive school environments. Local school boards should consult with their school board attorney in the development of policies and regulations relating to the treatment of transgender students.

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.

## **Bullying, Harassment, and Discrimination**

Because of societal prejudice and lack of awareness or understanding, transgender students may experience rejection, criticism, or bullying, that affect their emotional health and academic achievement. A 2019 national survey by GLSEN found that 84 percent of transgender youth feel unsafe at school, and those who experience victimization have significantly lower GPAs, are more likely to miss school out of concern for their safety, and are less likely to plan on continuing their education (Kosciw, Clark, Truong, & Zongrone, 2020). Compared to their

cisgender and heterosexual peers, LGBTQ+ youth report much higher rates of depression, anxiety, alcohol and drug use, and lower self-esteem. LGBTQ+ youth of color may experience additional stress and adverse effects as a result of their intersecting identities, facing both bias against their gender identity or expression as well as racism. Research has shown that LGBTQ+ students experience higher levels of victimization because of their gender identity and/or gender expression and have more adverse outcomes compared to their cisgender and heterosexual peers (Human Rights Campaign Foundation, 2018):

- 73 percent of surveyed LGBTQ+ youth have experienced verbal threats because of their actual or perceived LGBTQ+ identity.
- 77 percent of surveyed LGBTQ+ youth report feeling depressed or down over the past week, and more than 70 percent report feelings of worthlessness and hopelessness in the past week.
- 95 percent of surveyed LGBTQ+ youth report trouble sleeping at night.

Furthermore, a recent study found that socially transitioned transgender children who are supported in their gender identity have no elevations in depression and only minimal elevations in anxiety relative to population averages (Olson, Durwood, DeMeules, & McLaughlin, 2016). According to the Office of Civil Rights (OCR), “in cases where a complaint alleges that a school’s action or policy excludes a person from participation in, denies a person the benefits of, or subjects a person to discrimination under an education program or activity, on the basis of sex, the *Bostock* opinion guides OCRs understanding that discrimination against a person based on their status as homosexual or transgender generally involves discrimination on the basis of their biological sex. “(OCR, 2020). For transgender students, acts of verbal harassment may include the intentional and persistent use of names and pronouns not consistent with their identity. Sex-based harassment may also include the disclosure of the student’s gender identity without their consent as this presents safety concerns for the student.

Each local school division should ensure its compliance with all state and federal laws regarding harassment, intimidation, or bullying. Schools should have well-publicized policies prohibiting harassment and procedures for reporting and resolving complaints consistent with *Model Policy to Address Bullying in Virginia’s Public Schools* (VDOE, 2013) and compliant with the *Code of Virginia* § 22.1-276.01, § 22.1-208.01, § 22.1-279.6.D, § 22.1-291.4.

The OCR indicated that discrimination against a person based on their status as transgender generally involves discrimination on the basis of their biological sex (OCR, 2020). Thus, schools have a responsibility to respond to discrimination on the basis of sex, including on the basis of the student’s nonconformance to stereotyped notions of gender. Additionally, President Biden issued an Executive Order that states “Children should be able to learn without worrying about whether they will be denied access to the restroom, the locker room, or school sports...All persons should receive equal treatment under the law, no matter their gender identity or sexual orientation” (Exec. Order No. 13988, 2021).

Schools should provide a safe educational environment for all students and treat all students with dignity and respect, regardless of a student’s sex, sexual orientation, gender identity/expression, or transgender status. Local school boards should expand their policies prohibiting discrimination, harassment, and bullying to emphasize that discrimination or harassment against a student, by either school staff or by other students, on the basis of their gender identity is

prohibited under federal and state laws. Nondiscrimination policy and related complaint procedures should be readily accessible to students and parents/guardians. While there are existing procedures for complaints related to discrimination, harassment, and bullying, school divisions may consider emphasizing steps that a student or parent may take for complaints specifically related to discrimination based on gender identity. For example, a division-level ombudsman or team may be established to hear concerns brought by students, families, and staff when their concerns are not resolved at the school level. This division-level ombudsman or team may also be available to provide consultations to school staff with questions regarding the implementation of the policies. To assist staff in understanding how to provide a safe educational environment for transgender students, refer to considerations for training under the Professional Development and Training section.

***The [School Division] prohibits any and all discrimination, harassment, and bullying based on an individual's actual or perceived race, color, national origin, religion, sex, sexual orientation, gender identity, disability, or any other characteristic protected by law.***

***Any incident or complaint of discrimination, harassment, or bullying shall be given prompt attention, including investigating the incident and taking appropriate corrective action, by the school administrator. Complaints alleging discrimination, harassment, or bullying based on a student's actual or perceived gender identity shall be handled in the same manner as other discrimination or harassment complaints. The [School Division's Designated Contact] shall be available to hear concerns from students and parents when complaints are not resolved at the school level.***

## **Student Privacy/Confidentiality**

Many transgender students undergo the process of gender transition to confirm and live as the gender consistent with their gender identity. School divisions are encouraged to communicate openly, albeit confidentially, with students and families regarding the student's gender identity to ensure that appropriate steps are taken to determine a student's needs and address any privacy concerns and associated risks to the student's well-being. Protecting transgender students' privacy is critical to ensuring that they are treated consistent with their gender identity and minimizing the risk of harm to the students.

Regarding student privacy within the school community, a student's gender identity may be public or private, and the degree to which others are aware of the student's gender identity will influence plans to support the student. Given the potential for discrimination, sharing this information could expose a student to harassment and abuse from peers or adults within the school community. School staff should discuss with the student about how they prefer information about their gender identity to be shared. Some students may wish the information to remain private while others may prefer that the gender identity is shared or even discussed in class. If the student is in a setting where they have been known by their assigned sex at birth, options for privacy may be limited. In some situations, the student's move to a new school setting (e.g., starting middle school, transferring to a different school) affords the opportunity to confirm their gender identity with more privacy. Regardless of the circumstances, the school should support the student's need for privacy and safety and not disclose a student's gender identity to other students or other parents. Additionally, school staff should treat a student's

gender identity as being particularly sensitive information that should not be shared even internally among school personnel except to those with a legitimate educational interest or need to know. When a student publicly shares their gender identity, schools should work proactively to set clear boundaries about being gender inclusive and respond to negative reactions from the school community should they arise. Refer to additional discussions in the Other Considerations section regarding the process for school personnel when a student or parent informs the school about the student's gender identity.

Regarding student privacy outside of the school community, a student's gender identity, legal name, or sex assigned at birth may be considered confidential medical information and protected Personally Identifiable Information (PII). Disclosure of that information may violate the school's obligations under the *Family Educational Rights and Privacy Act (FERPA)* and the *Health Insurance Portability and Accountability Act of 1996 (HIPAA)*. Although school divisions may disclose a student's name and gender as directory information, parents and eligible students have the right to refuse the designation of that information as directory information, pursuant to [§ 22.1-287.1](#) of the *Code of Virginia*. Absent an explicit legal obligation, permission, or authorization from the appropriate party, such information should not be shared with anyone, and the local policy should explicitly prevent such disclosures. In order to maintain confidentiality, school divisions may need to consider additional policies related to record keeping. Refer to additional discussions on the separation of confidential information under the Student Records section. Any unauthorized disclosure of protected student information should be addressed according to existing policies and regulations in accordance with FERPA and HIPAA.

Additionally, privacy and confidentiality are critical for transgender students who do not have supportive families. Disclosing a student's gender identity can pose imminent safety risks, such as losing family support or housing. According to a recent study, LGBT youth have a 120 percent increased risk of experiencing homelessness compared to youth who identified as heterosexual and cisgender (Morton, Dworsky, & Samuels, 2017). School divisions will need to consider the health and safety of the student in situations where students may not want their parents to know about their gender identity, and schools should address this on a case-by-case basis. If a student is not ready or able to safely share with their family about their gender identity, this should be respected. There are no regulations requiring school staff to notify a parent or guardian of a student's request to affirm their gender identity, and school staff should work with students to help them share the information with their family when they are ready to do so. Refer to additional discussions regarding when parents are aware of but are not affirming of the student's gender identity in the next section.

***All school personnel shall adhere to legal standards of confidentiality relating to information about a student's gender identity, legal name, or sex assigned at birth.***

***In addition to adhering to all legal standards of confidentiality, school personnel shall treat information relating to a student's gender identity as being particularly sensitive, shall not disclose it to other students and other parents, and shall only disclose to other school personnel with a legitimate educational interest.***

## **Student Identification**

For many transgender students, their daily emotional and psychosocial wellness are dependent on receiving support and recognition for their gender identity. A transgender student may adopt a name that is different from their legal name on their birth certificate and use pronouns reflective of their gender identity. Many transgender students will adopt the gender pronouns typically associated with their gender identity. For example, most transgender girls will use she/her/hers pronouns, while most transgender boys will use he/him/his pronouns. There may be a less common pattern of pronoun usage among nonbinary students. Nonbinary students, as well as transgender students, may use gendered pronouns like she/her/hers or he/him/his, use gender-neutral pronouns such as they/them/their or ze/hir/hirs, use multiple sets of pronouns interchangeably, or use their name in place of any pronoun. School divisions should accept a student's assertion of their gender identity without requiring any particular substantiating evidence, including diagnosis, treatment, or legal documents. A student is considered transgender if, at school, the student consistently asserts a gender identity different from the sex assigned at birth. This should involve more than a casual declaration of gender identity, but it does not necessarily require any substantiating evidence nor any required minimum duration of expressed gender identity. Establishing gender identity can present differently from student to student, including, but not limited to: uniform assertion of such an identity, indication that the identity is sincerely held as part of the student's core identity, or that the student is not asserting such an identity for an improper purpose. Schools should work with a student to address any concern that an asserted gender identity may be for an improper purpose, such as permitting the student to respond with information that supports the request to be treated consistent with their gender identity.

When a student asserts that they have a name and/or pronoun affirming their gender identity, school staff should abide by the student's wishes as to how to address the student. All school employees shall treat all students with respect and dignity. In accepting employment with a school district, a school staff member agrees to abide by and uphold their school board's policies and procedures, as well as federal and state laws. A school administrator may need to direct school staff to abide by the wishes of a student on their name and pronoun. A school employee's intentional and persistent refusal to respect a student's name and pronoun is considered discriminatory. Schools also should be prepared for genuinely innocent confusion or uncertainty that may come up from school staff and students. Existing school board policies, including anti-discrimination, harassment, and bullying policies, may need to be adjusted or clarified relating to processes that address when a school staff member fails to comply with the student's request or an administrator's directive to use the name and pronoun consistent with their gender identity.

***Schools shall allow students to use a name and gender pronouns that reflect their gender identity without any substantiating evidence. School staff shall, at the request of a student or parent, when using a name or pronoun to address the student, use the name and pronoun that correspond to their gender identity.***

In the situation when parents or guardians of a minor student (under 18 years of age) do not agree with the student's request to adopt a new name and pronouns, school divisions will need to determine whether to respect the student's request, abide by the parent's wishes to continue using the student's legal name and sex assigned at birth, or develop an alternative that respects both the student and the parents. This process will require consideration of short-term solutions to address the student's emotional needs to be affirmed at school as well as the long-term goal of

assisting the family in developing solutions in their child's best interest. For example, a plan may include addressing the student at school with their name and pronoun consistent with their gender identity while using the legal name and pronoun associated with the sex assigned at birth when communicating with parents or guardians. Research has shown that transgender youth with supportive families experience a 52 percent decrease in recent suicidal thoughts and 46 percent decrease in suicide attempts (Ryan, Russell, Huebner, Diaz, & Sanchez, 2010) and that "chosen name used in more contexts was associated with lower depression, suicidal ideation, and suicidal behavior" (Russell, Pollitt, Li, & Grossman, 2018). Thus, school staff should be prepared to support the safety and welfare of transgender students when their families are not affirming. School staff should provide information and referral to resources to support the student in coping with the lack of support at home, provide information and resources to families about transgender issues, seek opportunities to foster a better relationship between the student and their family, and provide close follow-ups with the family and student. Refer to Appendix A for resources to support families of transgender students. To comply with [§ 63.2-1509](#) of the *Code of Virginia*, whenever school personnel suspects or becomes aware that a student is being abused, neglected, or at risk of abuse or neglect (as defined by § 63.2-100 of the *Code of Virginia*) by their parent due to their transgender identity, they must report those concerns to Child Protective Services immediately. Before making a decision on policies relating to situations when parents or guardians are not accepting of the student's gender identity, school divisions should consult their school board attorney.

## **School Records**

Schools' student information systems typically use the student's legal name and sex assigned at birth as reflected on their birth certificate, required at the time of school registration ([§ 22.1-3.1](#) of the *Code of Virginia*), and some documents attached to student records may require the use of the legal name and sex assigned at birth. Information in the student information systems is then used for a variety of documents and processes such as a unique student identification number needed for proper student accounting (i.e., for purposes of funding and accountability indicators), communication with parents, class rosters, attendance records, student identification cards, library cards, standardized tests, year books, and school photos. Not all transgender students update legal documents to align with their new name and gender, but they may wish to use the name and gender consistent with their gender identity in their school documents and processes. Record keeping that does not include the legal name and sex assigned at birth as well as the name and gender consistent with the gender identity may pose risks of inadvertently disclosing the student's gender identity as well as cause potential emotional trauma for a transgender student.

School divisions should develop solutions to support a transgender student's wishes for privacy. For example, schools could consider maintaining the student's legal name and sex assigned at birth as sensitive information in their student information system that requires additional privilege to access. The student information system can then separately include the name and gender consistent with the gender identity as additional information that is used to the greatest extent possible to populate school-related documents and are available to other users. The protection of the student's legal name and gender as sensitive information would prevent a student's gender identity from being disclosed, such as by a substitute teacher. In situations

where school divisions are required to use or to report a transgender student's legal name or sex assigned at birth, such as for purposes of standardized testing or student data reporting to the VDOE, school staff should adopt practices to avoid the inadvertent disclosure of such information. Additionally, schools should eliminate gender markers from their forms, documents, and records when feasible. While the topic of transgender students usually focuses on transgender males or transgender females, there are students who identify as nonbinary or gender-expansive. Since the concept of gender is increasingly being viewed as a gender spectrum, it may be beneficial to remove gender from forms and documents or provide a broader, more inclusive range of options. For purposes of data collection, the VDOE has expanded gender choices to include nonbinary as a third option if the student or parent wishes to use this option.

When a student or parent requests to change the student's name or gender on school records, the extent to which records are modified will depend on the type of record and the substantiation of the change. Local school boards may need to revise or clarify current policies relating to the process to change any element of a student's record, including the appeals process for decisions made regarding a change to the student's record.

School divisions will also need to consider policies relating to records for former students. When a student transitions after they are no longer enrolled in the school division, they may request amendments to school records reflecting a new name and gender that are different from those during their attendance. Former students may want to ensure that information on their records such as transcripts and standardized test scores are consistent with information they are submitting such as those on college or job applications. School divisions could consider respecting a former student's request to amend records retroactively and may consider processing those requests in the same way other student record amendment requests are processed. If a former student obtains a court order changing their name or amend other legal documents such as their birth certificate, state-or federal-issued identifications, or passports, school divisions, when requested, should amend the student's record, including reissuing a high school diploma or transcript, to reflect the student's current name and gender. Before making a decision on policies relating to changes to school records, transcripts, and diplomas, school divisions should consult their school board attorney.

***[School Division] is required to maintain a record that includes a student’s legal name and sex assigned at birth and may be required to use or report the legal name and sex assigned at birth in some situations. In situations where school staff is required to use or to report a transgender student’s legal name or sex assigned at birth, such as for purposes of standardized testing, school staff and administrators should adopt practices to avoid the inadvertent disclosure of such information.***

***Upon the request of a student or parent, schools shall use the name and gender consistent with the student’s gender identity on other school records or documents.***

***Schools shall change a student’s name and gender designation upon verification or submission of a legal document such as a birth certificate, state- or federal-issued identifications, passport, or court order. Records of former students may also be re-issued with the submission of legal documents substantiating the amended name and gender.***

## **Dress Code**

Local school board policies regarding dress code should serve to support equitable educational access for all students. The goal of dress or grooming codes should be to ensure the health and safety of students and not contribute to a hostile or intimidating atmosphere for any student. Dress codes, including hairstyles, should encompass broad guidelines that are not gender-specific and free of gender stereotypes. For example, gender-inclusive language such as “clothing must be worn in a way such that genitals, buttocks, and nipples are covered with opaque material” should be used rather than prohibiting certain types of clothing typically associated with one gender (e.g., “a mini skirt” or “camisole”). Transgender students have the right to dress in a manner consistent with their gender identity or gender expression, and any student has the right to expression free from gender expectations, as long as the student’s attire complies with the school’s dress code. Dress codes should be written, enforced, and applied consistently and equally to all students regardless of gender. In addition, [§ 22.1-279.6](#) of the *Code of Virginia* permits any school board to include in its code of student conduct a dress or grooming code. For school divisions who do include dress and grooming standards for students, the amendment explicitly states that any dress or grooming code shall “maintain gender neutrality by subjecting any student to the same set of rules and standards regardless of gender;...not have a disparate impact on students of a particular gender.”

School divisions should further examine and eliminate provisions for gender-specific attire relating to school activities and events such as physical education uniforms, school ceremony attires, gender-specific graduation gowns, band uniforms, or orchestra uniforms when these provisions are not necessary for educational purposes. For example, schools may require formal attire for all students at a choral concert but should not specify that girls must wear dresses and boys must wear ties.



*Dress and grooming codes shall be written relating to the attire or articles of attire without limits on gender expectations. Students have a right to dress in a manner consistent with their gender identity or gender expression. Schools shall administer and enforce dress and grooming codes consistently across the student body, regardless of actual or perceived gender identity or gender expression.*

*Requirements for attire for school-related programs, activities, and events shall be gender-neutral.*

## **Access to Activities and Facilities**

### **Student Participation in School Activities and Events**

In general, school divisions should make efforts to eliminate gender-based practices to the extent possible. Gender-based policies, rules, and practices can have the effect of marginalizing, stigmatizing, and excluding students, regardless of their gender identity or gender expression. Examples of practices that may be based on gender include grouping students for class activities, gender-based homecoming or prom courts, limitations on who can attend as “couples” at school dances, and gender-based events such as father-daughter dances. School divisions should review any gender-based policies, rules, and practices to determine whether they serve a legitimate educational goal or otherwise non-discriminatory purpose. School activities and practices should be gender-neutral and avoid dividing students by gender in the absence of an educational purpose. Any single-gender activity or program should not be premised on generalizations or stereotypes about the different talents, capacities, or preferences of any gender. For example, the composition of choruses should be gender-inclusive and based only on vocal range or quality requirements.

Whenever schools provide gender-specific activities such as physical education classes, students should be allowed to participate in a manner consistent with their gender identity. Students have the right to equitable access to programs, activities, and events that include but are not limited to acknowledgements, dances, assemblies, after-school programs, extracurricular activities, intramurals, non-competitive sports leagues, and field trips. For overnight field trips, the school should not force the student into single-occupancy accommodations that are not required for other students; however, such alternative accommodations should be made available to any student requesting them. It is important that school divisions adopt policies and procedures that are focused on the safety of all students and seek to address privacy interests in situations involving individuals undressing or showering. School divisions should ensure that all students who participate in extracurricular activities that involve overnight trips are aware of the school’s policies and options available to them in advance.

HB 145 and SB 161 exclude athletics for purposes of developing local school board policies. School divisions should follow rules and policies for interscholastic athletic participation as outlined by those athletic organizations. The Virginia High School League (VHSL) has provided policies regarding the participation in gender-specific sports team by transgender students (VHSL, 2020).

***Schools shall eliminate the practice of segregating students by gender to the extent possible.***

***For any school program, event, or activity, including extra-curricular activities that are segregated by gender, [School Division] shall allow students to participate in a manner consistent with their gender identity.***

***Athletic participation regulated by the Virginia High School League (VHSL) or another organization such as the Virginia Scholastic Rowing Association (VASRA), as well as middle school athletics, shall be in compliance with policies and rules outlined by those organizations.***

### **Access to Facilities**

All students are entitled to have access to restrooms, locker rooms, and changing facilities that are sanitary, safe, and adequate, so that they can comfortably and fully engage in their school programs and activities. Schools frequently maintain separate restrooms, locker rooms or other facilities for males and females. Students should be allowed to use the facility that corresponds to their gender identity. While some transgender students will want that access, others may want alternatives that afford more privacy. Taking into account existing school facilities, administrators should take steps to designate gender-inclusive or single-user restrooms commensurate with the size of the school. When schools have available gender-inclusive or single-user restrooms or private changing areas, these restrooms or areas should be accessible to all students without special codes or keys. This would allow for any students seeking privacy to access single-user restrooms and private changing areas voluntarily. For locker room facilities without private changing areas, school divisions should make reasonable accommodations for requests for increased privacy. At the request of any student, schools should offer alternative arrangements such as a separate changing schedule, use of a nearby private area, access to a staff member's office, not requiring students to dress in uniform for physical education, or offering alternatives to in-person physical education. Any accommodations offered should be non-stigmatizing and minimize lost instructional time. Also, note that any information related to accommodations should be handled in such a way as to protect the student's privacy relating to their gender identity.

It can be emotionally harmful for a transgender student to be questioned regarding the use of restrooms and facilities. School staff should not confront students about their gender identity upon entry into the restroom. Furthermore, as school divisions plan for new school facilities or renovations, they should consider generally accommodating students who want more privacy such as designing additional single-user or gender-inclusive restrooms or changing areas. Additionally, § 22.1-6.1 of the *Code of Virginia* requires each school board to make menstrual supplies available at all times and at no cost to students in accessible locations in each elementary school and in the bathrooms of each middle and high school. Accordingly, these supplies should be made available in all bathrooms to be gender-inclusive.

*Access to facilities such as restrooms and locker rooms that correspond to a student's gender identity shall be available to all students.*

*Upon request, single-user or gender-inclusive facilities or other reasonable alternatives shall be made available to any student who seeks privacy. Any options offered shall be non-stigmatizing and minimize lost instructional time.*

## **Professional Development and Training**

In order to promote a positive school climate where all students feel safe and supported, school divisions should incorporate regular education about transgender students into staff professional development and training. Periodic professional development should be provided to school mental health professionals (SMHPs), such as school-based counselors, psychologists, and social workers. SMHPs play a critical role in addressing the mental well-being of students that may have an impact on their academic performance. Thus, they are key personnel in addressing challenges that transgender students may face in their schools. Yet, in a recent national survey (GLSEN, 2019), 80 percent of SMHPs received little to no competency training in their graduate programs related to working with transgender populations, and 37 percent had not received any formal education or training on LGBTQ+-specific student issues during their professional careers. When they receive competency training and continuing education and training activities related to LGTBQ+ students, SMHPs feel more confident and engage in more efforts to support LGBTQ+ students directly and to address overall school climate. In addition to SMHPs, school divisions should provide training to all school staff, including but not limited to custodial staff, administrative support staff, substitute teachers, school nurses, and bus drivers. Any staff with opportunities to interact with students should have some familiarity with how to support LGBTQ+ students and would benefit from training that fosters a safe and supportive school climate.

The goal of professional development for all staff is to ensure that they understand the rights of all students to a safe learning environment and the local school board's expectations regarding the treatment of transgender students. Additionally, professional development should include culturally affirming, accessible LGBTQ+ competency training. It is recommended that training provided to school staff cover the following components:

- Key LGBTQ+ terminology and the use of unbiased language to promote equality and justice for LGBTQ+ students.
- Challenges and barriers frequently faced by LGBTQ+ students. This should heighten awareness of the implicit bias and discrimination that transgender students may encounter and identify the need for a gender-inclusive school.
- Federal and state laws and local school board policies and regulations relating to the rights of all students to a safe learning environment. This should include expectations relating to preventing, identifying, and responding to bullying and harassment of transgender students. Another area to address is the student's rights to privacy and how unauthorized disclosures to peers, parents, school staff, and other third parties may negatively impact the student's safety and well-being.

- Practices to create a safe, inclusive environment for all students. This should include strategies to promote understanding and foster positive relationships between LGBTQ+ students and their peers and the school community and steps to affirm LGBTQ+ students.
- Knowledge of LGBTQ+ affirming resources for students and families.
- Strategies to engage parents and other stakeholders regarding an inclusive school community that affirms LGBTQ+ students.

These components may overlap with or intersect other professional development topics such as bullying prevention, mental health awareness and suicide prevention, equity, positive school climate, or trauma-sensitive practices. Local school divisions should coordinate the various professional development activities for consistency. Topics relating to LGBTQ+ students, including safety and support for LGBTQ+ students, can be interwoven with other topics or as a distinct topic in training opportunities. Additionally, to ensure effective training, school divisions should use evidence-based curricula or consult with experts for the development and delivery of LGBTQ+ cultural competency training. The inclusion of content experts, including those with lived experiences, in the training may be vital in developing allies for LGBTQ+ students. Refer to Appendix A for resources related to professional development and training.

***All school mental health professionals shall be trained annually on topics relating to LGBTQ+ students, including safety and support for LGBTQ+ students.***

## **Other Considerations**

Students and staff each have their own unique religious and personal experiences, views, and opinions. Local school boards have an opportunity to lead discussions on issues of gender identity. It will be important to engage communities regarding policies, regulations, and procedures to ensure equal access to education. Involving appropriate community members should help to reconcile sometimes deeply conflicting community views. For example, engaging students and parents will be critical in developing policies and procedures relating to student privacy and addressing situations where parents are not affirming their child's gender identity. Additionally, local school boards may need to review agreements and processes with community partners for any activities taking place on school grounds to ensure consistency in practices. For example, local school boards may consider the applicability of policies relating to dress code and access to activities and events for programs such as Junior Reserve Officers Training Corps (JROTC) or community youth athletic leagues who use school facilities. While the conversation is not easy, local school boards and school staff will need to provide clear guidance on the implementation of these policies and reduce their exposure to legal liability.

In order for the policies to be effective, local school boards should consider developing detailed guidelines and processes for the implementation of these policies. For example, to ensure consistency across the division, guidelines for the implementation of policies should include processes to update student classroom records and other school records with the student's name and, if necessary, appropriate gender marker that are consistent with their gender identity. Such a process will require clear procedures and coordination across the school division by all personnel with responsibilities related to student information and records, including but not limited to registrars, technology support personnel managing student information systems, administrative support personnel, and test administrators. Additionally, processes, including forms or templates,

should be developed to support students or parents requesting a name and gender change and requesting an action plan to support the student's transition. School divisions are recommended to establish and designate a point-of-contact or team of knowledgeable and affirming staff members to support transgender students. When a student informs the school about their transition or requests a change to their name and gender, it is recommended that a point-of-contact, or a multi-disciplinary school team if needed, meet with the student (and parents/guardians if the parents/guardians are affirming of the student's gender identity) to develop a plan to accommodate the student's needs and requests. A template may be helpful to develop a plan that includes areas to be addressed such as names and pronouns, privacy concerns, communication plans, student information and records, access to facilities and activities, and other considerations.

In addition to policies that address the areas discussed above, local school boards should consider developing additional policies, regulations, or guidelines that foster an inclusive school climate. For example, school divisions may consider ensuring LGBTQ+-inclusive curricula. According to GLSEN, schools with LGBTQ+-inclusive and affirming curricula have students who have less-hostile school experiences, increased feelings of connectedness to the school community, better academic and mental health outcomes, and are less likely to miss school (GLSEN, 2019). School divisions may take an inclusive approach by incorporating educational content that is transgender affirming into the general education curriculum, such as history, literature, and science. For example, material may feature or include transgender people or highlight the contributions of LGBTQ+ people in state and US history curricula. School divisions should also initiate efforts to curate an inclusive library collection. As with many curricular choices, school divisions should involve key stakeholders in making those decisions. School divisions will need to consider additional actions if they wish to include material related to gender identities in Family Life Education (FLE). Per the *Code of Virginia* § 22.1-207.2, parents and guardians have the right to review the Family Life Education (FLE) curriculum. Additionally, in the *Code of Virginia* § 22.1-207.1, parents and legal guardians have the right to excuse their child from all or part of FLE instruction.

To further foster positive, inclusive school climates, school divisions should promote activities and LGBTQ+-affirming resources for students and families. For example, schools should support the formation of student clubs or programs regarding issues related to LGBTQ+ youth such as Gay-Straight Alliances or Gender & Sexuality Alliances (GSAs), ensuring that these are equally easy to establish in relation to other student clubs or programs. Besides professional development for school staff, students may also benefit from training on an inclusive school environment. This may be in the form of peer-led education groups, educational material on student rights and training on self-advocacy skills, learning assemblies, or training of student leaders. Other affirming activities include the promotion of visible supports for LGBTQ+ youth such as the use of flags and stickers and the sharing of affirming community resources. Examples of resources for students are provided in Appendix A.

## **Appendix A: Resources**

### **Resources for School Divisions**

American Psychological Association (APA) [LGBT Youth Resources](#)

APA [Promoting Resiliency for Gender Students Diverse and Sexual Minority in Schools](#)

APA [Supporting Transgender and Gender Diverse Students in Schools: Key Recommendations for School Administrators](#)

Gender Spectrum [Gender Inclusive Schools Toolkit](#)

GLSEN [Safe Space Kit](#)

Gender Spectrum [Schools in Transition: A Guide for Supporting Transgender Students in K-12 Schools](#)

Midwest Symposium for Leadership in Behavior Disorders [LGBTQ 101](#)

National School Board Association [Transgender Students in Schools: Frequently Asked Questions and Answers for Public School Boards and Staff](#)

National Black Justice Coalition [Words Matter Gender Justice Toolkit](#)

SAMHSA [A Practitioner's Resource Guide: Helping Families to Support Their LGBT Children](#)

Teaching Tolerance [Classroom Resources](#)

US Department of HHS and National Center on Parent, Family and Community Engagement [Healthy Gender Development and Young Children: A Guide for Early Childhood Programs and Professionals](#)

Virginia School Boards Association (VSBA) [Council of School Attorneys \(COSA\) Welcoming Schools](#)

### **Model and Existing Policies and Guidelines**

Arlington Public Schools [APS School Board Policy Information: Transgender & Gender Non-Conforming Students, Policy Implementation Procedures: Transgender Students in Schools, Transgender Students in Schools - Guidelines and Implementation Plan](#)

Boulder Valley School District [Guidelines Regarding the Support of Students and Staff Who Are Transgender and/or Gender Nonconforming](#)

California Safe Schools Coalition [Model School District Policy Regarding Transgender and Gender Nonconforming Students](#)

Connecticut State Department of Education [Guidance on Civil Rights Protections and Supports for Transgender Students Frequently Asked Questions](#)

GLSEN [Model Local Education Agency Policy on Transgender and Nonbinary Students](#)

Madison Metropolitan School District [Guidance & Policies to Support Transgender, Non-Binary, and Gender-Expansive Students](#)

Massachusetts Department of Elementary and Secondary Education [Guidance for Massachusetts Public Schools Creating a Safe and Supportive School Environment: Nondiscrimination on the Basis of Gender Identity](#)

Montgomery County Public Schools [Guidelines for Students: Gender Identity](#)

Oregon NOW [Model Student Dress Code](#)

State of New Jersey Department of Education [Transgender Guidance for School Districts](#)

US Department of Education [Examples of Policies and Emerging Practices for Supporting Transgender Students](#)

Virginia High School League (VHSL) [Virginia High School League Handbook and Policy Manual 2020-2021](#)

### **Professional Development Resources**

[American Counseling Association LGBTQ-Affirmative Counseling Competencies](#) (in partnership with Human Rights Campaign)

[Garden State Equality Professional Development Workshops](#)

[GLSEN Professional Development](#)

[Rainstorms to Rainbows](#) (LGBTQ+ Consulting and Counseling)

[Side-by-Side Trainings](#)

[Teaching Tolerance](#) (Gender & Sexual Identity Webinars)

[The Safe Zone Project](#) (Awareness and Ally Training Workshops)

[Welcoming Schools Professional Development](#)

### **Resources for Students**

[Campus Pride](#)

Centers for Disease Control and Prevention [LGBTQ Youth Resources](#)

Human Rights Campaign [Transgender Resources](#)

[It Gets Better Project](#)

Harvard Law School LGBTQ+ Advocacy Clinic and NCLR [Trans Youth Handbook: Helping You Learn About Your Legal Rights in Different Areas of Your Life](#)

[Transgender Assistance Program of Virginia](#)

[The Trevor Project](#)

UVA [Teen & Young Adult Transgender Clinic](#)

Virginia Department of Health (VDH) [Virginia Transgender Resource and Referral List](#)

VDH [Resources for LGBTQ Youth](#)

### **Resources for Parents**

Child Welfare Information Gateway [Resources for Families of LGBTQ Youth](#)

[Helping Families Support Their LGBT Children](#)

Movement Advancement Project [Family Support: Resources for Families of Transgender & Gender Diverse Children](#)

[PFLAG](#)

San Francisco State University [The Family Acceptance Project](#)

San Francisco State University [Supportive Families, Healthy Children: Helping Families with LGBT Children](#)

[Trans Youth Family Allies Resources for Parents](#)

Welcoming Schools [Transgender and Non-Binary Children: Books to Help Adults Understand](#)

### **Advocacy Organizations**

[Equality Virginia](#)

[Gender Spectrum](#)

GLSEN [Richmond Chapter](#)

GLSEN [Northern Virginia Chapter](#)

[He She Ze and We](#)

[National Black Justice Coalition](#)



National Center for Transgender Equality [Youth & Student Issues](#)  
[Shenandoah LGBTQ Center](#)

[Side by Side](#)

[Trans-Latinx DMV](#)

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