



#202-21

**Commonwealth of Virginia
Virginia Department of Education
Superintendent's Memo #202-21**

DATE: July 30, 2021
TO: Division Superintendents
FROM: James F. Lane, Ed.D., Superintendent of Public Instruction
SUBJECT: **Complying with House Bill 145 (2020) and Senate Bill 161 (2020) Regarding Model Policies Concerning the Treatment of Transgender Students**

The Virginia Department of Education (VDOE) has received several inquiries from school divisions on their obligations to comply with [House Bill 145](#) and [Senate Bill 161](#) passed during the 2020 Regular Session of the General Assembly. The law requires local school boards to adopt policies on the treatment of transgender students that are consistent with, but may be more comprehensive, than the model policies developed by VDOE. These policies must also be adopted no later than the 2021-2022 school year. The [model policies were posted on The Virginia Regulatory TownHall](#) on January 4, 2021 and following public review, on April 2, 2021, [Superintendent's Memo #085-21](#) announced that the model policies document had been finalized and had also been made available on VDOE's [Gender Diversity webpage](#).

Since this guidance was finalized, the rulings made by the U.S. District and Appeals Courts on [Grimm vs. Gloucester County School Board](#) related to Title IX and sex discrimination were upheld. Additionally, the Circuit Court in Lynchburg, Virginia has ruled that the recent complaint against VDOE's model guidance lacked standing and therefore, has been dismissed. The mandate to implement the provisions of HB145/SB161 remains in effect.

With respect to content of local policies, VDOE's model policies extend beyond just compliance with nondiscrimination laws to cover matters related to student records, student privacy, bullying and harassment, dress codes, and participation in school activities, among others. These topics were statutorily mandated to be included in the VDOE guidance. Therefore, nondiscrimination policies alone may be insufficient to meet the full scope of this legal mandate.

The requirement that local school boards adopt policies on the treatment of transgender students consistent with VDOE guidance by the 2021-2022 school year was codified by legislation action. Like all other mandates on local school boards resulting from General Assembly action, local school boards must fulfill this directive in order to be in compliance with state law. **Local school boards that elect not to adopt policies assume all legal responsibility for noncompliance.**

While no state funding is tied to this legislative mandate, noncompliance may still be costly for local school boards due to civil litigation or other associated liabilities. Section [22.1-87](#) of the *Code of Virginia* does provide that "Any parent, custodian, or legal guardian of a pupil attending the public schools in a school division who is aggrieved by an action of the school board may, within thirty days after such action, petition the circuit court having jurisdiction in the school division to review the action of the school board." Local school boards should consider these indirect costs in evaluating the consequences of inaction.

Local school boards are advised to consult with their local school board attorney and liability insurance provider on the ramifications of not adopting policies, consistent with the VDOE model policies, on the treatment of transgender students before the coming school year.

For more information

For more information on local school board responsibility for meeting this and other legislative mandates, please contact the Office of Policy at policy@doe.virginia.gov for more information at (804) 225-2092.

JFL/LMS