| **Virginia Board of Education Agenda Item** | **Seal of the Commonwealth of Virginia** |
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**Agenda Item: E**

**Date: October 15, 2020**

# Title: **Final Review of Guidance and Model Policy for the Notification of Protective Orders in Public Elementary and Secondary Schools**

**Presenter: Dr. Samantha Hollins, Assistant Superintendent of Special Education and Student Services**

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## Purpose of Presentation:

Action required by state or federal law or regulation.

## **Executive Summary:**

In 2019, the Virginia General Assembly, through House Bill 1997, amended the *Code of Virginia* by adding a section numbered § [**22.1-279.3:2**](https://lis.virginia.gov/cgi-bin/legp604.exe?191+ful+CHAP0579&191+ful+CHAP0579) relating to the notification of protective orders in elementary and secondary schools and enacted that: *The Board of Education shall establish guidelines and develop model policies to aid local school boards in the implementation of §* [***22.1-279.3:2***](https://lis.virginia.gov/cgi-bin/legp604.exe?191+ful+CHAP0579&191+ful+CHAP0579) *of the Code of Virginia, as created by this act.*

As a response to this bill, the ***Guidance and Model Policy for the Notification of Protective orders in Public Elementary and Secondary Schools*** was developed with input from stakeholders that included school-based personnel representing diverse Superintendent regions, the Virginia Department of Criminal Justice Services, a parent representative, and specialists from the Virginia Department of Education (VDOE). The *Guidance and Model Policy* offers recommendations, a model local policy, and resources to assist school divisions in responding to the notification of a protective order for a student. Recommendations include processes for the notification of essential school personnel of the protective order and a support plan for the protected student as well as sample forms to facilitate these processes. Other considerations relating to confidentiality, the Family Educational Rights and Privacy Act (FERPA), school personnel training, and collaboration with other agencies are also included.

The Board of Education accepted for first review the proposed ***Guidance and Model Policy for the Notification of Protective orders in Public Elementary and Secondary Schools*** at their July 23, 2020, meeting. There were no revisions requested by the Board at that time. Additional public input was sought following the first review by disseminating the proposed guidelines to school divisions via a Superintendent’s Memorandum.

The VDOE received and incorporated feedback from two stakeholders. Most revisions made to the guidelines since the first review focus on clarifying how to address expired protective orders and the role of schools in the enforcement of protective orders when the respondent attends the same school as the protected student or when the respondent is a parent who wants access to educational records and educational decisions.

The *Guidance and Model Policy* meet the Board of Education’s Comprehensive Plan to actively foster equitable, supportive, and safe academic, disciplinary, and physical environments and support and promote wrap-around services and mental and physical wellness and intervention programs to increase opportunities for all students to achieve (Goal 1).

**Action Requested:**

Final review: Action requested at this meeting.

Superintendent’s Recommendation:
The Superintendent of Public Instruction recommends that the Board of Education approve the proposed *Guidance and Model Policy for the Notification of Protective Orders in Public Elementary and Secondary Schools*.

## Rationale for Action:

In compliance with § 22.1-279.3:2 of the *Code of Virginia*, the *Guidance and Model Policy for the Notification of Protective Orders in Public Elementary and Secondary Schools* is an essential resource for Virginia school divisions in fostering safe and supportive school environments.

**Previous Review or Action:**

Previous review and action. Specify date and action taken below:

Date: July 23, 2020

Action: First Review

**Background Information and Statutory Authority:**
In 2019, Virginia General Assembly, through House Bill 1997, amended the *Code of Virginia* by adding a section numbered § [**22.1-279.3:2**](https://lis.virginia.gov/cgi-bin/legp604.exe?191+ful+CHAP0579&191+ful+CHAP0579) that relates to the notification of protective orders in public elementary and secondary schools.

House Bill 1997 states the following:

*“1. That the Code of Virginia is amended by adding a section numbered §* [***22.1-279.3:2***](https://lis.virginia.gov/cgi-bin/legp604.exe?191+ful+CHAP0579&191+ful+CHAP0579) *as follows:*

*§* [***22.1-279.3:2***](https://lis.virginia.gov/cgi-bin/legp604.exe?191+ful+CHAP0579&191+ful+CHAP0579)*. Public elementary and secondary school students; protective orders; notification.*

*Any school principal who receives notice that a circuit court, general district court, juvenile and domestic relations district court, or magistrate has issued a protective order pursuant to §* [***16.1-253***](https://law.lis.virginia.gov/vacode/16.1-253/)*,* [***16.1-253.1***](https://law.lis.virginia.gov/vacode/16.1-253.1/)*,* [***16.1-253.4***](https://law.lis.virginia.gov/vacode/16.1-253.4/)*, or* [***16.1-279.1***](https://law.lis.virginia.gov/vacode/16.1-279.1/)*, subsection D of §* [***18.2-60.3***](https://law.lis.virginia.gov/vacode/18.2-60.3/)*, or Chapter 9.1 (§* [***19.2-152.7:1***](https://law.lis.virginia.gov/vacode/19.2-152.7%3A1/) *et seq.) of Title 19.2 for the protection of any child who is enrolled at a public elementary or secondary school in the Commonwealth where such principal is employed, or any other order prohibiting contact with such a child, including an order issued as a condition of pretrial or posttrial supervision, shall subsequently notify licensed instructional personnel and other school personnel who (i) provide direct educational or support services to the protected child or the child subject to the order, (ii) have a legitimate educational interest in such information, and (iii) are responsible for the direct supervision of the protected child or the child subject to the order that such order has been issued.*

*2. That the Board of Education shall establish guidelines and develop model policies to aid local school boards in the implementation of §* [*22.1-279.3:2*](https://lis.virginia.gov/cgi-bin/legp604.exe?191+ful+CHAP0579&191+ful+CHAP0579) *of the Code of Virginia, as created by this act.”*

The Virginia Department of Education established a workgroup in March 2020 that included stakeholders such as school-based personnel representing diverse Superintendent regions, the Virginia Department of Criminal Justice Services, parent representative, and specialists from the Virginia Department of Education. The group collectively contributed to the development of the *Guidance and Model Policy* document that includes recommended processes to notify essential personnel of the protective order and develop a support plan for the protected student, sample forms to facilitate these processes, and a model local policy. Other considerations relating to confidentiality, FERPA, school personnel training, and collaboration with other agencies are also included.

The Board of Education accepted for first review the proposed *Guidance and Model Policy for the Notification of Protective orders in Public Elementary and Secondary Schools* at their July 23, 2020, meeting. There were no revisions requested by the Board at that time. Additional public input was sought following the first review by disseminating the proposed *Guidance* to school divisions via a Superintendent’s Memorandum.

The VDOE received and incorporated feedback from two stakeholders. Most revisions made to the guidelines since the first review focus on clarifying how to address expired protective orders and the role of schools in the enforcement of protective orders when the respondent attends the same school as the protected student or when the respondent is a parent who wants access to educational records and educational decisions. The comments and responses to the comments are summarized below.

| **Summary of Comment** | **Revisions** | **Notes** |
| --- | --- | --- |
| The guidance needs to address temporary protective orders. It needs to address differences between emergency orders, preliminary protective orders, and protective orders. | No change. | Virginia does not have a temporary order, only emergency and preliminary protective orders. The document includes definitions for the three types of POs. |
| There is concern that parents may share a PO after it has already expired or that there is not sufficient time before the expiration date for the school to develop a support plan for the student, particularly with EPO or PPO. | Clarifications added that staff will be notified of POs that have not expired and support plans may be developed if there is sufficient time before the expiration date.  |  |
| Are schools expected to enforce POs? Are they required to develop a support plan? Are schools liable if they do not provide support services to the student? Schools should wait until after a factual hearing to develop support plans or conduct threat assessments. | Clarifications have been added that schools are not responsible for enforcing POs. Emphasis has been added that school divisions have the option to develop a support plan, including conducting a threat assessment, when there is sufficient time and when it is needed. | The legislation only requires the notification of essential staff of the PO. The document includes information that schools are not liable when respondents violate POs. |
| If schools inform respondents before they are served, they may have angry respondents. | Clarification added that the support plan may need to consider requesting the parent to contact law enforcement to serve the protective order. |  |
| Courts need to be clear as to which children are covered in a PO since schools may not know who are siblings. | No change. | The sample form for receipt of court order allows parents to indicate names of other children included in the PO. Recommendations for the court are outside of the scope of this document. |
| Courts need to be clear on when the respondent is a parent, whether they are allowed to access educational records or participate in educational decisions. | Clarification added for schools to consult with their school board attorney if there are questions relating to FERPA or IDEA as they pertain to provisions of the protective order. | Recommendations for the court are outside of the scope of this document. |
| Petitioners may decide that a PO is no longer needed but not go to court to dissolve the PO. | Clarification added for schools to notify staff of changes to POs, including when a parent rescinds the notification of the PO. |  |
| When the respondent is another student, how do schools address when students are in the same class? Courts need to be more specific about the terms, what does “no contact” mean? | Clarification added for school divisions to consult with their school board attorney if there are questions relating to the provisions of a PO. | The document suggests that the support plan may consider working with either or both students to minimize contact. Schools are not responsible for enforcing POs.Recommendations for the court are outside of the scope of this document. |
| The courts should send the EPO/PPO/PO directly to the schools within 24 hours. It would be beneficial if schools could review the DC626, 627, 650 and 652 orders and additions made to clarify what is expected from schools. | No change. | Recommendations for the court and school participation in court proceedings are outside of the scope of this document. |

**Timetable for Further Review/Action:**
Following Board approval, a Superintendent’s Memorandum will be released to school divisions announcing the availability of the document and how to access it on the VDOE website.

**Impact on Fiscal and Human Resources:**

Any costs associated with the development and dissemination of the document will be provided by Department of Education funds according to state procurement policies and procedures and will be absorbed within existing resources.