



COMMONWEALTH of VIRGINIA

DEPARTMENT OF EDUCATION

DATE: August 25, 2023

TO: Division Superintendents

FROM: Dr. Lisa Coons, Superintendent of Public Instruction

SUBJECT: Recent Attorney General Opinion

I wanted to ensure you were aware of a recent opinion issued by Attorney General Jason Miyares regarding the final “Model Policies on Ensuring Privacy, Dignity, and Respect for All Students and Parents in Virginia’s Public Schools” (the “2023 Model Policies”), which took effect on July 19, 2023. In the opinion, the Attorney General concludes that the 2023 Model Policies fully comply with state and federal anti-discrimination laws such as the Equal Protection Clause of the Fourteenth Amendment, Title IX of the Education Amendments Act of 1972, and the Virginia Human Rights Act.

The Attorney General’s opinion makes clear—schools boards *must* adopt policies consistent with the 2023 Model Policies, per *Code of Virginia* § 22.1-23.3. Further, the opinion confirms that the Department had authority to address athletics in the 2023 Model Policies. As such, school boards should review their policies to ensure consistency and amend or supplement to the extent any policies are inconsistent on critical topics such as athletics.

As noted in Superintendent’s Memo #[138-23](#) (and as initially outlined in Superintendent’s Memo #202-21 issued under the prior Administration), this requirement was codified in statute and is therefore the law of the land. Local school boards, and their members, that elect not to adopt policies consistent with those released by the Department for the upcoming school year assume legal responsibility for noncompliance. Local school boards should consider the potential costs of civil litigation or other associated liabilities in evaluating the consequences of their actions.

The opinion is available at this link: <https://www.oag.state.va.us/files/Opinions/2023/23-042-Youngkin-issued.pdf>.