

GUIDE TO VDOE'S 2023 ANTI-TRANS MODEL POLICIES

This guide is for people living in school districts that have adopted the Virginia Department of Education's 2023 anti-trans model policies (["Model Policies on Ensuring Privacy, Dignity, and Respect for All Students and Parents in Virginia's Public Schools."](#))

This guide includes an overview of laws that may impact a student's ability to:

- Change their name and gender marker
- Change and keep private their school records
- Access affirming restrooms
- Access disability accommodations

This information is intended to help students, parents, and educators advocate for and protect trans and nonbinary youth even under hostile local school district policy. This guide outlines potential approaches you could use to assert the rights trans and nonbinary students still have under state and federal law. That's because the 2023 anti-trans model policies include multiple provisions that acknowledge exceptions and reasonable modifications to the policies as *required* by federal and state law. These provisions include restroom and facilities access, gender-segregated activities, and athletic participation.

This document is not intended as legal advice. Everyone's situation is different, and you should consult with an attorney if you have questions about whether your rights have been violated and what action you can or should take in your situation.

Name And Gender Marker Changes

Under Virginia law, with the support of a parent or guardian, minors are able to change both their legal name and the legal sex reflected on government-issued identity documents.

It is not necessary to change a student's legal name or sex to have an affirming name and pronoun used under the 2023 anti-trans model policies. However, it can help protect a student's privacy and avoid harmful treatment by hostile personnel.

Examples of identity documents that can be legally changed:

- [Court order for change of name.](#)¹

¹ Va. Code § 8.01-217.

- Department of Vital Records reissuance of Birth Certificate with change of name and sex (no medical procedure required).²
- [DMV driver's license or state issued identification card](#) reflecting court-ordered name change and self-certified gender (no medical documentation required).
- U.S. Department of State issued Passport reflecting court-ordered name change and self-certified gender (no medical documentation required).

Remember: court orders for change of name become public record by default, even for minors. You may wish to contact an attorney to fully understand how this process might impact you, *especially* if you have any privacy concerns.

The [Virginia Equality Bar Association](#) and [Equality Virginia](#) regularly host name- and gender-marker change clinics where you can sign up for free legal assistance. Check their social media for information about upcoming clinics.

If you are unable to attend a clinic or your need is urgent, the [National LGBTQ Bar's Family Law Institute's private attorneys](#) take cases on an ongoing basis.

School Records

Once a young person has updated their legal name and gender marker, they may wish to ensure the school no longer retains outdated records reflecting their prior name and sex assigned at birth.

Under the Family Education Rights and Privacy Act (FERPA), schools have the obligation to keep education records private. FERPA is a federal law that prohibits disclosure of education records without a parent's written consent to any person other than those "who have been determined by such agency or institution to have legitimate educational interests."³

FERPA also provides for parents to request a formal hearing to "[s]eek amendment of the student's education records that the parent or eligible student believes to be inaccurate, misleading, or otherwise in violation of the student's privacy rights."⁴ The school is required to arrange the hearing.

A hearing can be used to correct outdated records and ensure school employees only have access to the official record. This can help protect a young person from having transphobic school staff access outdated records and can avoid harmful behaviors from staff. The hearing must be conducted by a third-party who does not have a direct interest in the outcome.

² Va. Code § 32.1-261.

³ 20 U.S.C. § 1232g(b)(1)(A); 34 C.F.R. § 99.31(a)(1)(i)(A).

⁴ 34 CFR § 99.7(a)(2)(ii).

Parents and legal guardians also have the right under Virginia law to enforce this with a school system: “A parent who believes that information in the education records collected, maintained, or used under this chapter is inaccurate or misleading or violates the privacy or other rights of the child may request the school that maintains the information to amend the information.”⁵

Under FERPA, parents have a right to inspect and review the education records of their children. This includes records such as notes taken by a school counselor. Students who are not yet out to their parents, or who have safety or privacy concerns, should be cautious about what information they share that could be included in a written record created by the school. Students can ask counselors or other school personnel what might be included in written records before disclosing information.

The U.S. Department of Education is responsible for enforcing FERPA and [has a process for receiving complaints](#) from parents and students eighteen or older. Federal funding may be withheld or terminated if a district is found to have violated FERPA.

Restroom Access

In *Grimm v. Gloucester County School Board*, the federal Fourth Circuit Court of Appeals struck down a school board’s discriminatory restroom policy and held that Gavin Grimm, a transgender student, must be permitted to use the restroom that aligned with his gender identity.

The court found that the policy denying Gavin restroom access was not related to the school’s supposed interest of maintaining student privacy and was based on “sheer conjecture and abstraction.”

The 2023 anti-trans model policies create a default rule that students must use the restroom according to their “biological sex” but allow exceptions “to the extent federal law requires otherwise” and cite to *Grimm*.

This is because school boards in Virginia are required to comply with the federal court’s decision in *Grimm*.

Because the court’s decision analyzed the policy as applied to Gavin, some districts have argued that the factual situation of other trans students is different than Gavin’s – that the trans student doesn’t have the same medical diagnoses or updated records as Gavin, or that there are demonstrated privacy or other issues in their situation.

⁵ 8 Va. Admin. Code 20-671-760(F).

While factual similarities between your situation and Gavin’s (such as updated identity documents or a diagnosis of gender dysphoria) can be helpful, they don’t have to be exactly identical for your affirming restroom access to be protected.

School districts that deny trans students restroom access run a very serious risk of violating federal law. If your school district is denying you access to the restroom aligned with your gender identity, you may wish to consult with an attorney to discuss your options.

Disability Accommodations

Being trans is not a disability. Gender dysphoria – a state of severe distress caused by feeling that one's gender identity does not match one's sex as assigned at birth – is a disability, and affects many trans youth.

If a student has gender dysphoria, there are two main ways to request a reasonable modification to school policies to accommodate the student: a 504 plan or an IEP (individualized education program). A 504 plan is an accommodation provided under Section 504 of the federal Rehabilitation Act, and an IEP is a special education plan under the federal Individuals with Disabilities Education Act. Both IEPs and 504 plans are written plans that outline how a school will meet a specific student’s unique needs arising from a disability.

A parent can initiate the [process of requesting accommodations](#) by contacting their child’s school district. The student does not necessarily need a formal diagnosis of gender dysphoria, but it can be helpful.

Unfortunately, students without affirming parents are unlikely to be able to take advantage of accommodations under these laws.

Parents and students should also be aware that these processes may come with increased privacy risks and/or the creation of additional records with non-preferred gender markers or names, incorporated medical documents, etc., especially for IEPs.

Request a 504 Plan

Section 504 of the Rehabilitation Act is a federal law designed to protect the rights of individuals with disabilities in programs and activities that receive federal financial assistance from the government. Section 504 plans are used when a disability requires an accommodation, but does not negatively impact educational performance.

Accommodations through a 504 plan can include:

- Using affirming names and pronouns
- Dress code accommodations

- Restroom accommodations
- Locker room accommodations
- Sports teams or student club accommodations
- Privacy protections (from other students, staff, etc.)
- Counseling

Accommodations should not isolate or create stigma for the trans student. It's up to the school district to establish standards and procedures for the required initial evaluations and periodic re-evaluations of students with 504 plans.

Request an Individualized Education Program (IEP)

The Individuals with Disabilities Education Act (IDEA) is a law that makes available a free appropriate public education (FAPE) to eligible children with disabilities throughout the nation and ensures special education and related services to those children. An IEP is put into place when a disability negatively impacts educational performance.

State educational agencies receive federal funds to build IEPs for students with disabilities, and the IEP process generally has more procedural protections than a 504 plan. One requirement is that an initial evaluation be conducted by an eligibility group (including the parent), and that the student be reevaluated every three years. If a parent disagrees with the evaluation of their child, they have a right to an independent educational evaluation (IEE).

Services and accommodations through an IEP can include:

- Using affirming names and pronouns
- Access to affirming restrooms and locker rooms
- Coaching and/or counseling
- Safe spaces within school
- Behavioral supports

If a parent disagrees with a school's decisions on whether a program is needed or what it should include, they can request a "due process hearing" by submitting a request in writing to the school district's designated representative and the Virginia Department of Education.

Athletic Participation

In Virginia, the [Virginia High School League](#) (VHSL) sets the criteria for member schools regarding trans athletes – not individual schools or school districts.

For a transgender student to participate on a sports team aligned with their gender identity, the [2023-2024 VHSL transgender participation policy](#) requires:

- The student or parent notifies their school principal or designee the student's gender identity and desire to play on sports team consistent with their gender identity.
- The student or parents must then submit various documentation affirming the student's gender identity, including a written statement from the student, 1-2 letters from family, friends or teachers, a list of the student's treatment or medication, and written verification from a healthcare provider, to the student's school principal or their designee.
- Once the principal or designee receives notice of desire to play on sports team and receives the student's various documentation, the principal or designee sends both to the VHSL District Chairman and Committee, who reviews the application and issues a recommendation.
- The VHSL District Committee's recommendation is then sent to the VHSL Executive Director. If the recommendation is to grant participation to the trans athlete and the Executive Director agrees, the trans student has immediate eligibility. If not, the policy provides an appeals process.

You can find the full participation criteria, process, and appeals forms for trans students under VHSL's "Forms/Info" [here](#).

Conclusion

The Virginia Department of Education's 2023 anti-trans model policies include multiple provisions that acknowledge exceptions and reasonable modifications can be made as *required* by federal and state law.

In other words, trans and nonbinary students still have rights under state and federal law, like the ones listed above in this guide. You can use those them to push for what you need.

For more information, check out ACLU-VA's [Student Advocacy Toolkit](#), which includes links to other organizations and resources you may find helpful.

This information was last updated and is current as of February 2024.