Critical Questions for School Boards to Ask When Updating their Legal References to Include Va. Code § 22.1-23.3, per VSBA Recommendation

These questions are for counties seeking to follow the VSBA’s guidance in simply updating their legal references to include Va. Code § 22.1-23.3.

- It is unclear whether this update will incorporate the VDOE Transgender Model Policies by default, since the newly referenced law is the statute that initially directed the VDOE to create the policies.
- **It is up to school board members to ask the following questions** of their superintendents and/or school board attorneys to determine the legal effect of this action.

Here is the first question to ask regarding the legal effects of this action:

1) **“If this school board votes to include Va. Code 22.1-23.3 in our legal references, then what legal and practical effects does that have exactly? Specifically, would we be adopting the VDOE’s Transgender Model Policies as law?”**

If they say yes, then no more specific questions are required. Voting to update the legal references to include Va. Code § 22.1-23.3 will incorporate the VDOE’s Model Policies and all the constitutional violations therein.

However, if they say no, then further questions are required to make it **absolutely clear** that the school board is **NOT giving legal effect** to the VDOE’s Model Policies. Consider asking any of the following questions, which are based on requirements outlined in VDOE’s Model Policies:

1) **So, to be crystal clear for the record, if we vote to include this legal reference, then:**
   a) Teachers who do NOT use a student’s “preferred pronouns” would NOT be compelled to do so, correct?
   b) **Schools that require students to use bathrooms and locker rooms that reflect their biological sex will NOT be in violation of our policy, correct?**
   c) **Schools will NOT affirm a student’s “preferred gender identity” without parental consent, or otherwise conceal a student’s “gender transition” from their parents, correct?**

If they disagree with any of those questions or the premises on which they are based, they may be under the impression that updating the legal references will give legal effect to VDOE’s Model Policies without actually passing any new policies.

Whether or not a school board wishes to adopt the VDOE policies, such a major policy change should be considered publicly and NOT slid in secretly through an innocuous legal reference. Therefore, it is incumbent upon all school board members to ask these questions so they may know the **precise effects** of what they are doing if they vote to update their legal references.