



What Virginia's Anti-Equity Executive Order 1 and Reports Mean for K-12 Schools and Students

A Guide for School Leaders

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5815 Callaghan Road, Suite 101 • San Antonio, Texas 78228 • 210-444-1710
contact@idra.org • www.idra.org • www.facebook.com/IDRAed • www.twitter.org/IDRAedu

What Virginia's Anti-Equity Executive Order 1 and Reports Mean for K-12 Schools & Students – A Guide for School Leaders

Contact: Terrence Wilson, J.D., IDRA Regional Policy and Community Engagement Director

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Executive Summary

On January 15, 2022, Governor Youngkin's first official act focused on public education. He issued Executive Order 1, seeking to "end the use of inherently divisive concepts, including critical race theory, and to raise academic standards." The executive order required the Virginia Department of Education to issue two responsive reports by days 30 and 90 in the administration.

The focus of Executive Order 1 (EO1) has been publicly reported as being "Virginia schools," yet its scope of authority does not include Virginia schools. In fact, 92% of EO1 is directed to the Superintendent of Public Instruction, who supervises operations of the Virginia Department of Education (VDOE). The remaining directive is aimed at executive employees. **This means that no directive in EO1 applies to local school division policy or practice.** Simply put, school leaders should continue their focus on diverse student needs and closing long-standing gaps that are deeply rooted in inequitable systems and policies.

What EO1 Does

EO1 attempts to create confusion and intimidation by equating the teaching of so-called "inherently divisive concepts" with violations of federal civil rights laws that apply to education. It is a signaling document that does not substantively remove already-existing rights and requirements to create equitable school environments free from discrimination. It should not distract K-12 stakeholders from the essential work of meeting the needs of all students and upholding the rights of all learners.

What the 30-Day Report Does

The 30-day report responds to the Governor's directive for the Superintendent of Public

Instruction to report on "any policies, programs, training or curricula that falls within the definition of inherently divisive concepts." The report includes several VDOE policies, programs and resources that were aimed at increasing educational equity, including the VDOE's own EdEquityVA website and resources. Notably the report does not rescind resources, but rather removes them from being available on the VDOE website.

What the 90-Day Report Does

The 90-day report responds to the Governor's request to "identify any necessary executive and legislative actions needed to end use of all inherently divisive concepts in public education" and to report on "the status of efforts to close the 'achievement gap' in K-12 education, with recommendations for additional executive and legislative actions" to address career and college readiness of Virginia's high school graduates. The report misattributed *equity* as contributing to or causing gaps in learning that have worsened as a result of the COVID-19 pandemic.

What this Means for Virginia's Education Leaders

School leaders, teachers, students, parents and caregivers, and other education stakeholders can still demand to be protected from discrimination based on federal and state law, and school leaders should still provide those protections. Specifically, schools are still governed by anti-discrimination laws, like Titles IV & VI of the *Civil Rights Act of 1964*, that prohibit schools that receive federal funds from discriminating based on race, color, national origin or religion; and Title IX of the *Education Amendments of 1972* that prohibits schools from discriminating based on sex. If students or teachers are targeted because of their

No directive in Executive Order 1 applies to local school division policy or practice.

identity, they should contact legal protection organizations immediately.

School leaders, teachers, students, parents and caregivers, and other education stakeholders can also demand culturally diverse curricula from their school districts. While EO1 may seek to limit discussions based on racial and ethnic identity by calling them “inherently divisive concepts,” students have free speech rights to access diverse curricula (see Note 1), and school leaders and school districts have significant authority to set curricular standards and may reasonably promote curricula that covers history accurately and discusses systems of marginalization and oppression (see Note 2).

School leaders, teachers, students, parents and caregivers, and other education stakeholders must stay informed and involved with the curricular activities of the Virginia Board of Education, which is the body that is ultimately responsible for creating standards that are historically accurate, and help students understand systemic marginalization and oppression. Particularly, as the Virginia Board of Education delays the public process and attempts to rewrite history standards, impacted communities must show up and demand that the Virginia Board of Education maintain a commitment to accurate, full history.

School leaders and teachers will now have to look beyond the VDOE to find training that covers actual tenets of culturally responsive teaching and culturally responsive leadership and provide engaging instruction with opportunities for application to practice. However, these practices should still be encouraged and supported despite what the order and reports say.

Contrary to the assertions made in the 30-day report, the equity tools and guidance removed by the Superintendent of Public Instruction are

not “banned” but simply are unavailable from the VDOE. School leaders, teachers, students, parents and caregivers, and other education stakeholders may, and should, still access and use those materials to work to create more equitable, culturally sustaining school environments. The Superintendent of Public Instruction may remove access to resources on the VDOE website but may not limit the use of those resources by local school divisions, local leaders or K-12 stakeholders.

Assertions in the 90-day report notwithstanding, school leaders should continue to promote equity work as a way to close gaps in learning and to ensure that every student has access to a high quality education. School leaders, teachers, students, parents and caregivers, and other education stakeholders should continue to demand that their education leaders address contributing factors to “achievement gaps,” including racist policies, systemic lack of investment and other environmental factors.

Schools still cannot ban books just because they cover topics that address gender, sexuality, race or religion. While schools have discretion to set the curriculum, there must be actual education-related reasons for removing a book. Schools cannot ban books simply because someone dislikes the ideas contained in the books.

Governor’s schools and other Virginia schools that rely on selective admissions practices may continue to initiate and implement policies to expand access to their schools. Creating diverse student bodies is still viewed as an important goal for schools, and they may still use holistic admissions processes that are applied in a race neutral manner.

Contrary to the assertions made in the 30-day report, the equity tools and guidance removed by the Superintendent of Public Instruction are not “banned” but simply are unavailable from the VDOE.

Note 1: See *Bd. of Educ. v. Pico*, 457 U.S. 853, 868 (1982) (plurality opinion) asserting these rights hold particularly true for libraries. See also *Tinker v. Des Moines School Dist.*, 393 U.S. 503, 506, 89 S.Ct. 733, 736, 21 L.Ed.2d 731, stating students do not “shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.”

Note 2: Courts have generally recognized that the public schools possess the right to regulate speech that occurs within a compulsory classroom setting and that a school board’s ability in this regard exceeds the permissible regulation of speech in other governmental workplaces or forums. See *Hazelwood Sch. Dist. v. Kuhlmeier*, 484 U.S. 260, 267, 108 S.Ct. 562, 98 L.Ed.2d 592 (1988). *Boring v. Buncombe County Bd. of Educ.*, 136 F.3d 364, 368 (4th Cir.1998) (en bane), the Fourth Circuit created a simplified analysis for applying Pickering-Connick in the context of a public teacher’s speech, by holding that “curricular speech” does not touch on a matter of public concern and is not protected by the First Amendment. *Lee v. York County School Div.*, 418 F.Supp.2d 816 (E.D. Va. 2006).

Actions Detailed in this Guide

Actions K-12 leaders should start and/or continue:

- Empower classroom practices and pedagogy centered on diverse student needs, particularly for historically marginalized students.
- Accelerate school division work and central office policies aimed at lessening discrimination for historically-marginalized students.
- Access, share and use materials that help address inequities students are experiencing, including those removed from the VDOE website.
- Ensure that local resources are not censored on topics crucial for students to understand their own identity and the world around them.
- Initiate and implement policies to expand access to public schools, including Governor's schools and other Virginia schools that rely on selective admissions practices.

K-12 leaders should not:

- Change equitable curriculum or pedagogical strategies featuring diverse voices that are aligned to current Virginia standards.
- Enact policies or administrative practices that limit teacher and staff access to curriculum that focuses on diversity or roll back professional development opportunities focused on accurate and research-supported strategies to address inequities that prevent student success.

K-12 leaders must follow and engage with:

- The Virginia Board of Education's policymaking and processes
- The upcoming legislative and budgeting efforts of the administration and General Assembly.

Purpose of this Guide

On January 15, 2022, Governor Youngkin's first official act focused on public education. He issued EO1, seeking to "end the use of inherently divisive concepts, including critical race theory, and to raise academic standards (Mirshahi, 2022). The executive order required the Virginia Department of Education to issue two responsive reports by days 30 and 90 in the administration. In conjunction with the executive order, Governor Youngkin announced a new email "tip line" to report to his administration any "inherently divisive" K-12 educational practices or materials.

Concepts banned under EO1 were not clear-cut, despite a paragraph-long definition (see box). The lack of clarity, layered onto an authoritarian tip line operating outside established school-to-family communication systems, sowed confusion and fear among schools and educators. Subsequent 30- and 90-day reports from the VDOE shed more light on what would be considered a "divisive concept," suggesting they included efforts to confront educational inequity in the commonwealth's schools.

Because the vague language around what constitutes a "divisive concept" has sowed confusion in Virginia schools, we clarify here what we mean by *educational equity*, *inequity* and *anti-equity* in this guide.

According to the 2021 federal executive order: "The term *equity* means the consistent and systematic fair, just and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment, such as Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality" (Exec. Order No. 13,985, 2021).

Inequity manifests as "situations in which differences in need are not adequately considered"

Executive Order 1

For the purposes of this Executive order "inherently divisive concepts" means advancing any ideas in violation of Title IV and Title VI of the *Civil Rights Act of 1964*, including, but not limited to of the following concepts

- (i) one race, skin color, ethnicity, sex, or faith is inherently superior to another race, skin color, ethnicity, sex, or faith;
- (ii) an individual, by virtue of his or her race, skin color, ethnicity, sex or faith, is racist, sexist, or oppressive, whether consciously or subconsciously,
- (iii) an individual should be discriminated against or receive adverse treatment solely or partly because of his or her race, skin color, ethnicity, sex or faith;
- (iv) members of one race, ethnicity, sex or faith cannot and should not attempt to treat others as individuals without respect to race, sex or faith;
- (v) an individual's moral character is inherently determined by his or her race, skin color, ethnicity, sex, or faith,
- (vi) an individual, by virtue of his or her race, skin color, ethnicity, sex, or faith, bears responsibility for actions committed in the past by other members of the same race, ethnicity, sex or faith;
- (vii) meritocracy or traits, such as a hard work ethic, are racist or sexist or were created by a particular race to oppress another race.

(Exec. Order No. 13,985, 2021). *Anti-equity*, by extension, refers to resistance to efforts aimed at providing students with goods and services on the basis of need.

We also believe it is important to define *discrimination* as it has traditionally been understood in civil rights law related to education. Unlawful discrimination refers to the unfair treatment of an individual or group based on characteristics like race, ethnicity, national origin, ability or gender, limiting full rights to educational opportunities (U.S. Department of Education, 2020).

Who Should Use this Guide

This guide draws on policy, civil rights law and educational leadership perspectives to provide K-12 education leaders and stakeholders with an analysis of how EO1 and related policies and actions – including the appointment of five

new Virginia Board of Education members – might impact educational equity for Virginia's K-12 students. It is written for school leaders, school system administrators and school board members, while attending to the interest of the diverse students, parents, caregivers, teachers, and other stakeholders in Virginia's 132 public school divisions. K-12 leaders are the individuals who must navigate the impacts of EO1 and subsequent policy decisions in classroom and school experiences, teaching methods, policies and professional development across the commonwealth.

Our goal is to help school leaders understand what they can and should continue doing, start doing or shift doing to address ongoing educational inequity facing students in the commonwealth as well as how these efforts can be supported by the many people invested in the success of our schools.

Leadership is Needed

Virginia's Students Depend On It

School leadership requires a different approach than teaching because leaders serve as the public face of schools. The anti-equity pressure on local school leaders varies significantly according to the community context. In some cases, equity work is being censored through book bans and intimidation of teachers who want to use materials that enable students to better understand their evolving identity and the world around them. In others, it is moving forward.

Commonwealth pressure presents challenges to local education leaders. How do you respond? Do you actively support commonwealth anti-equity directives? Do you push back on commonwealth anti-equity directives? Do you stay quiet about commonwealth anti-equity directives?

Advancing equity, especially in certain contexts, presents significant risks. Staying quiet may feel safer for division-level leaders. But it shifts the risk decision to school-level leaders, who have

to make the same calculation. And then, in the absence of building-level guidance, the risk shifts to the teachers. Ultimately this impacts students, particularly those experiencing ongoing, unaddressed inequities.

Our analysis suggests that K-12 leaders should resist attempts to inaccurately frame education equity as “divisive.” This is not a time for silence or inaction. Public education leaders must center the needs of historically-marginalized students by surfacing the history surrounding educational inequities and drawing public attention to data that illustrates these inequities.

School leaders also should empower students to assert their rights to curricula and materials that accurately reflect the world around them. School leaders should model for their communities engagement in democratic decision-making processes that reflect these priorities.

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Setting the Stage for the Current Anti-equity Movement

Historical Context of Racial Inequity

Racialized educational inequity persists in Virginia. Our racially minoritized and historically disadvantaged students continue to confront pervasive inequities in:

- school funding (Baker, Farrie & Sciarra, 2018; Lou & Blagg, 2018);
- school facilities (Rooks, 2020; Filardo, Vincent & Sullivan, 2019);
- access to stable, experienced, diverse and strong educators (Simon & Johnson, 2015);
- access to advanced coursework, like gifted and talented programs (U.S. GAO, 2016); and
- exclusionary school discipline (Skiba et al., 2011; Edwards, 2016).

These education inequities continue to be strongly related to school segregation in and outside school buildings. Education inequities related to funding, facilities, advanced coursework and the like are not just inequitable, they are unequal – meaning that historically underserved students who need more resources receive less than their more advantaged peers.

White and historically advantaged students are harmed by segregation too (Boddie, 2020; Schneider et al., 2021). They develop warped, damaging notions about their abilities and position in society and about their different-raced and classed peers. Under a system of segregated public schools, many students leave unprepared to understand, let alone care for and share with, one another in a multiracial democracy (Pettigrew & Tropp, 2006; Mickelson & Nkomo, 2012).

Recommitting to the ongoing democratic project that is public education in Virginia

means addressing segregation and inequity in and outside the classroom. It means teaching children to see one another as fully human and as equals. It means helping them communicate, cooperate and work across lines of difference. Recommitting to public education in today's complex and changing society does not mean banning concepts from on high but rather training students to ask difficult questions, then to seek out and evaluate evidence together.

Ultimately, recommitting to public education means preparing future citizens to participate and continue the ongoing project that is U.S. democracy. These ideals have their roots in Virginia's history, which, like our national history, has been defined by progress and regress when it comes to racial equality, democracy and public schooling.

In the earliest days of Virginia's establishment, Thomas Jefferson argued for a system of free public education (1779). He did so because he believed that widespread education was the foundation of democracy, shoring up political liberty while advancing knowledge and practical learning. But in a commonwealth cleaved by the moral stain of slavery, Jefferson's vision was limited to young white males and females. Virginia's children did not secure a universal right to a public education until Reconstruction, when reentry to the Union was predicated on the commonwealth's willingness to inscribe it into a revised constitution. A multiracial political coalition in a newly multiracial democracy fought to enshrine that right to a public education (Black, 2020; Du Bois, 1935).

White backlash rendered Virginia's Reconstruction-era version of a multiracial

democracy short-lived, though ostensibly the commonwealth's commitment to public schools lived on. However, Virginia would be the first southern state to codify school segregation in a rewritten version of the constitution circa 1902. School segregation meant separate and unequal funding, facilities and duration of schooling for Black students and white students in the commonwealth. Curricula in Virginia's white schools erased content on Black contributions to the democratic project and offered lessons that reinforced racial hierarchy and diminished or refuted the harms of slavery (McRae, 2020).

During the first half of the 20th century, Jim Crow laws in Virginia meant rigid, commonwealth-mandated separation in public education and society writ large. Dehumanizing beliefs about white racial superiority upheld segregation, dividing a "them" from an "us" and validating violence, unequal resources and second-class citizenship.

A strike by Black students against unequal educational facilities, led by Barbara Rose Johns, in Prince Edward County, Virginia, signaled the beginning of the commonwealth's contribution to the landmark *Brown v. Board of Education* litigation. The tenacity of Black student activism, the quiet leadership of Black educators and the legal acumen of two Black lawyers, Oliver Hill and Spotswood Robinson, helped directly challenge *de jure* public school segregation (Branch, 1989; Kluger, 2004). And, in 1954, a unanimous, all-white Supreme Court agreed with their challenge, ruling that racial segregation in schools violated the 14th Amendment's guarantee of equal protection under the law and was therefore unconstitutional.

White politicians in Virginia spearheaded a campaign known as "Massive Resistance" to the Brown decision, choosing to shutter public schools and privatize public education in many localities rather than desegregate. White resistance took many forms, including school closures and commonwealth funding cut-offs; a commonwealth-operated Pupil Placement Board

designed to preserve nearly all-white schools; and white Citizens Councils that sought to maintain segregation through intimidation, violence and the establishment of private white segregation academies (Segregation Academies and State Action, 1973; Champagne, 1973; Pratt, 1992).

Another faction of more moderate white Virginians, allied with Black civil rights leaders, sought to keep public schools open in their own self-interest (Lassiter & Lewis, 1998). With the eventual but short-lived support of all three branches of the federal government, schools reopened and gradually desegregated.

The *Civil Rights Act of 1964* and the *Elementary and Secondary Education Act* (ESEA) of 1965 provided legislative support for federal enforcement of school desegregation in the South. The *Civil Rights Act* contained an important provision known as Title VI, which prohibited federal dollars for programs that discriminated on the basis of race, color or national origin. And the ESEA offered significant federal financial assistance – and therefore an effective inducement – to state and local school districts intent on defying school desegregation orders in violation of Title VI (Frankenberg, & Taylor, 2015; Orfield, 1969).

Shortly thereafter, the U.S. Supreme Court issued a decision, based on a case out of New Kent County, Virginia, that clarified what divisions needed to do to eliminate segregation "root and branch" (Brennan & Supreme Court of the United States, 1967).

Yet school desegregation, when it finally occurred in Virginia, did so primarily on white terms and never approached the equal footing, inclusiveness and creative power-sharing of true integration (Powell, 2005). And it was time-limited, in large part because of white legal and political backlash.

Contemporary Context for Racial Inequality

During the second half of the 20th century in Virginia, and continuing to the present, backlash to racial equality primarily has manifested through “colorblind” ideology. This worldview asserts wrongly that racism is a thing of the past or that it has been reversed to target historically advantaged groups (Bonilla-Silva, 2003).

Redefining or minimizing racial discrimination reinforces a dogma that suggests persistent educational inequities are the result of cultural or individual shortcomings. Ascribing systemic inequities to cultural or individual shortcomings helps justify attacks on policies designed to advance educational equity. It becomes more difficult to endorse those attacks when we honestly reckon with our history, which is why efforts to do so are in the cross hairs.

Recent attempts to censure an honest accounting of our history are rooted in white backlash to the racial reckoning prompted by George Floyd’s murder in 2020. A coordinated conservative strategy created a moral panic around critical race theory (CRT), a legal and academic framework asserting that racism is systemic and that the law is not colorblind, among other key tenets (Crenshaw, 2011). In September of 2020, then President Trump issued an “equity gag order” targeting “divisive concepts” in diversity training, which has since spawned more than 200 copycat laws in statehouses across the country (Pollock et al., 2022; Young & Friedman, 2022). Those laws seek to co-opt a historic civil rights tool, Title VI, as the basis for action. This is true in Virginia, as a misreading of Title VI underlies Governor Youngkin’s first executive order and related executive actions.

Virginia is not unique, nor is the present moment, in contemplating public education policy changes to improve student and societal outcomes. Gaps in student achievement (as measured by standardized assessments) and the connections to student demographics and inequitable education and enrichment opportunities, have been a clear

and persistent challenge and a focus of policy for decades at the commonwealth and national level. It is worth noting that the only time a significant narrowing of these gaps occurred was during the desegregation era, prior to the erosion of federal enforcement and support for integrated schools (Magnuson & Waldfogel, 2008).

In recent decades, Democrats and Republicans both have narrowly focused on school “choice” schemes, holding teachers accountable, adjusting education standards, and testing with high-stakes consequences as policy “solutions” for disparities, claiming that market forces combined with higher expectations and punitive sanctions can solve inequalities rooted in concentrated poverty and intergenerational racism (Carter & Welner, 2013).

In the past seven years, Virginia and other states have sought to broaden the idea of school accountability since the bipartisan reauthorization of ESEA, the major federal legislation for K-12 education. The *Every Student Succeeds Act* (ESSA) authorized states to consider elements of student success, like attendance, disparate exposure to exclusionary discipline, and access to advanced coursework, among other measures (2015). This has led to a continued focus on student test scores – though with reductions to the overall number of tests in Virginia – as well as indicators of school climate and learning growth.

Virginia’s most recent commonwealth-level focus on education equity included a VDOE initiative known as “EdEquityVA.” This effort centered on a “commitment to eliminating the predictability of student outcomes based on race, gender, zip code, ability, socio-economic status and/or languages spoken at home” (VDOE, 2021). It was an attempt to provide resources and supports to local school divisions to enhance their capacity to address student education needs. This was a nascent approach to focus on and directly address inequities in educational opportunity and access and inequities reflected in disproportionate experiences and outcomes.

Timeline of Major Policy Shifts Across Virginia's Gubernatorial Administrations to Address Student Achievement and Standardized Test Score Gaps

Virginia's Standards of Learning & Assessment Based Accountability

Following declines in student achievement on national tests, the Virginia Board of Education dramatically strengthened the Standards of Learning in core content areas in 1995. SOL Assessments began in 1998, and standards based accreditation system goes into effect in 1999.

Evolution of Accountability & Testing with High Stakes

In 2001, the federal *No Child Left Behind Act* becomes law, as the nation also enters into an era of high stakes testing and accountability. Graduation rates are incorporated into school accreditation in Virginia, and the rigor of SOL content continues to be enhanced as Virginia maintains SOLs rather than adopt Common Core Standards.

Virginia's Support for Challenged Systems & Schools

Commonwealth efforts seek to support challenged schools, the Office of School Improvement is created at the VDOE and efforts are made to support schools sanctioned under NCLB. Public charter school legislation is passed, and commonwealth takeover of Petersburg (via Opportunity Education Institute aka OEI) is struck down by commonwealth courts as unconstitutional.

Test Reduction & Skills Modernization

Virginia continues to require significantly more standardized tests than federal law mandates, and a bipartisan emphasis on a more balanced assessment system results in a reduction in number of and change in the type of assessments required. This aligns with a broader shift to hone greater critical thinking and communication skills over rote memorization to better prepare students for a 21st century economy.

Accreditation Reform

To hold schools accountable for more than just aggregate pass rates on standardized tests, Virginia's accreditation system is revised to take into account: student growth, college and career readiness, and student absenteeism. Accreditation ratings are simplified to provide greater clarity to parents and drive more targeted and nuanced interventions by divisions and the commonwealth.

Educational Equity Emerges as Priority

NCLB is replaced by the *Every Student Succeeds Act* and both Virginia and the nation emphasize closing of achievement gaps by student subgroups. The national and commonwealth emphasis on outcomes of student subgroups, and recognition of rapidly diversifying student and teacher populations drive efforts to close achievement gaps with targeted commonwealth funding, including revisions to the Virginia Standards of Quality.

Pivot to Virtual, Variable Return to F2F

Local school divisions have discretion over modality and offer instruction in the fall of 2020 in a wide variety of ways. All schools reopen for in-person learning by spring of 2021, but major disruptions in learning set students back and exacerbate previously existing systemic inequities.

Classroom Censorship Disruptions & Political Campaign Season

During the summer of 2021, conservative think tanks launched misleading claims about "critical race theory" and false assumptions about equity and diversity programs leading to some parent complaints in school divisions in Virginia and throughout the country as other parents and students spoke for inclusive education. The gubernatorial campaign in Virginia raises tensions over this and other educational policies.

Accelerated VBOE Majority

Partisan action taken during the 2022 legislative session removed members of the Board of Education re-appointed by Governor Northam, paving the way for Governor Youngkin to have a majority after July 2022 appointments.

Overview of EO1 and the 30- and 90-day Reports

Executive Order 1 provides guidance and direction to the VDOE on policy, and it signals to Virginia citizens what the administration's educational goals and priorities are regarding the distribution of educational resources. **It does not, however, constitute a change in commonwealth law.** Efforts to codify the tenets of EO1 failed to gain the votes needed in Virginia's 2022 legislative session. Without legislative action, legal action against a party "in violation" of EO1 is not possible.

Below, we examine each section of EO1 and the subsequent 30- and 90-day reports, providing information on what these documents say along with an analysis of the meaning and potential implications for schools, school divisions and classrooms across the commonwealth (what K-12 stakeholders need to know). Each analysis is followed by potential actions to continue to address student needs and inequities.

We show that, in addition to the inconsistencies with federal laws and issues with authority over public education, the directives in the EO1 lack mechanisms to significantly change equity-driven work at the division or school level.

At the same time, we highlight potential avenues for more meaningful shifts in commonwealth education policy as Governor Youngkin's term progresses. We include analyses of the overarching impacts of the order and its responsive reports as well as administration actions, and we offer local actions leaders should advance to keep addressing student inequities. We close with key areas for K-12 leader and stakeholder engagement and focus moving forward.

EO1's Paradoxical Framing

EO1 is titled: "Ending the Use of Inherently Divisive Concepts, Including Critical Race Theory, and Restoring Excellence in K-12 Public Education in the Commonwealth." It includes a four-paragraph opening statement. Paragraph 1 frames the importance of education in Virginia and broad goals that students develop a love of "lifelong learning" and are empowered as risk takers and innovators. Paragraphs 2 and 4 state that "political indoctrination" and "inherently divisive concepts," including "critical race theory and its progeny" do not belong in educational settings. Paragraph 3 offers a goal of teaching students "how to think" and affirms the importance of teaching diverse ideas and the "entirety" of history with specific examples of key historical events.

Analysis of EO1's Framing

EO1 leads with a term, "inherently divisive concepts" that it purports, together with "critical race theory," to eliminate from Virginia schools. Yet "inherently divisive concepts" and "critical race theory" are vague and amorphous terms. EO1 does not provide sufficient guidance on how to interpret them.

In fact, EO1 offers some language that appears to continue to prioritize the teaching of diverse perspectives and the importance of learning across differences. Statements affirming teaching diverse ideas and the full history of our commonwealth and nation may be contradictory or inconsistent with some interpretations of "inherently divisive concepts" and "critical race theory" creating confusion in schools across the commonwealth.

Executive Order 1 does not constitute a change in commonwealth law.

In addition to using a vague and ill-defined term like “divisive concepts,” EO1 does not define what type of lessons, materials, resources or training would be considered “inherently divisive,” which may result in inconsistent civil rights protections for students and highly variable educational experiences at the school and classroom level. By using this vague term and by misrepresenting what “critical race theory” is and does, the opening statement gives the false impression that efforts to address persistent and very real inequity in educational opportunity are somehow harmful to relationships between racial groups or individuals within groups that have been either historically powerful or historically marginalized.

To the extent that EO1 seems to propose an educational approach that would undermine existing student rights or protections extended under federal and commonwealth anti-discrimination laws, those existing laws take precedence. EO1 does not acknowledge this reality and, in fact, distorts it by asserting, without evidence, that some educator or policy actions responsive to inequities might violate the Constitution or the provisions of the *Civil Rights Act* cited.

The provisions cited have specific meanings and definitions that should be understood as follows:

- Title IV “promotes the desegregation of public schools and authorizes the U.S. Attorney General to file lawsuits to enforce the Act” (FindLaw, 2017).
- Title VI “prohibits discrimination on the basis of race, color and national origin in programs and activities receiving federal financial assistance” (U.S. Department of Justice, 2022).

While the Youngkin Administration is asserting that concepts banned under what is vaguely defined as “divisive” may discriminate against white and/or other more historically advantaged groups, unraveling efforts to promote educational equity for racially minoritized and historically

marginalized students may be grounds for Title VI complaints from the opposite, and more historically consistent, direction.

Local Action Needed: Keep Addressing Educational Inequity & Discrimination

Local school divisions are required to comply with and, if necessary, enforce commonwealth and federal anti-discrimination law. Those laws remain unchanged by EO1. All students continue to be entitled to a free public education absent discrimination and bias.

Specifically, schools are still governed by anti-discrimination laws like Title VI of the *Civil Rights Act of 1964*, which prohibits schools that receive federal funds from discriminating based on race, color, national origin or religion, and Title IX of the *Education Amendments of 1972* which prohibits schools from discriminating based on sex (*Civil Rights Act*, 1964); U.S. Department of Justice, 2015). The Biden Administration has further explained that Title IX should protect LGBTQ+ students from discrimination as well (see Note 3).

School divisions that are undertaking or want to undertake measures to promote education equity and reduce disparities in resources or outcomes may continue to do so. These goals should not be considered “inherently divisive” and, in some cases, are required by federal or commonwealth law and policy (e.g., striving to narrow gaps in achievement).

Therefore, an accurate reading of federal law suggests that school divisions’ equity work aimed at lessening discrimination may be continued.

Local school divisions are required to comply with and, if necessary, enforce commonwealth and federal anti-discrimination law. Those laws remain unchanged by Executive Order 1.

Note 3: This interpretation is currently being challenged and is enjoined due to federal court order in several states outside of Virginia; See Proposed Rule - Enforcement of Title IX of the *Education Amendments of 1972* with Respect to Discrimination Based on Sexual Orientation and Gender Identity in Light of *Bostock v. Clayton County*, 86 Fed. Reg. 32637 (June 22, 2021) (to be codified in 34 CFR Chapter I).

As part of EO1, 12 directives instructed the Superintendent of Public Instruction to review, end, revise or rescind myriad policies, programs, materials and resources based on the Superintendent of Public Instruction's determination they include "inherently divisive concepts." The directive to executive employees prohibits them from "directing or otherwise compelling students to personally affirm, adopt or adhere to inherently divisive concepts." The

areas of focus in these directives were VDOE materials, resources, programs, commonwealth standards and curriculum, commonwealth training and professional development, and systems of accountability. In other words, they impact areas in which the commonwealth supports or guides local school divisions in their efforts to improve student learning and academic outcomes.

Six EO1 Directives Focused on Materials, Resources, Policies and Programs

► **Directive 1** directs the Superintendent of Public Instruction to review and end any VDOE policies that promote "inherently divisive concepts."

► **Directive 2** directs the Superintendent of Public Instruction to review, identify and remove VDOE resources, guidelines, websites, best practices and other materials produced by the Department of Education to identify and remove those that "promote or enforce divisive or inherently racist concepts."

► **Directive 5** directs the Superintendent of Public Instruction to review and revise or rescind the Superintendent's Memo #050-19 issued by the previous Superintendent of Public Instruction "to remove reference to any inherently divisive concepts." (The 2019 memo of focus offered resources for school division leaders to navigate community conversations about race.)

► **Directive 7** directs the Superintendent of Public Instruction to review the VDOE "EdEquityVA" program and end any portion that promotes "inherently divisive concepts."

► **Directive 10** directs the Superintendent of Public Instruction to "end the use of any portion of any Governor's School program that promotes inherently divisive concepts."

► **Directive 9** directs the Superintendent of Public Instruction to prepare two reports:

- The interim 30-day report to the Governor on "any policies, programs, training, or curricula that falls within the definition of

inherently divisive concepts."

- A report within 90 days to "identify any necessary executive and legislative actions needed to end use of all inherently divisive concepts in public education."

The interim 30-day report responsive to Directive 9 consists of a letter signed by Superintendent of Public Instruction Jillian Balow, an appendix listing eight "documents or products" and four "examples." Three of these examples appear to be screenshots of website information. The appendix and examples present a variety of VDOE materials, policies, programs and resources that the Superintendent of Public Instruction deemed "falling within the definition of divisive concepts."

The fourth example is a copy of Superintendent's Memo #050-19, issued to divisions in the wake of former Governor Northam's blackface scandal to provide resources for nurturing constructive dialogue about race and racism. The Superintendent's actions responsive to this directive were to "rescind" resources included on VDOE's EdEquityVA Website, including EdEquityVA Resources and a resource repository. Access to some of the materials cited in the interim 30-day report, items related to providing all K-12 students with the resources and support they need to succeed, was removed from the VDOE website. The materials pulled from the VDOE website were produced by 23 organizations external to VDOE. The Superintendent of Public Instruction's letter includes a statement, "We will need to proactively review policies, practices and

pedagogies around the state to uphold the *Civil Rights Act* and comport with Executive Order 1.”

Analysis of EO1’s Directives Focused on Materials, Resources, Policies and Programs

After the 30-day report identified equity-related materials based on the decision of the Superintendent of Public Instruction, public access to many of these materials was removed from the VDOE website. This removal signaled a “ban” on these educational resources, although they remain available through other websites and organizations (see Appendix).

Using the vague term “inherently divisive” as the basis for removal may also reinforce the belief that this term carries legal weight. (Disclaimer: A link to a report on current school segregation and policies to address it, co-authored by two contributors to this report, was among those removed from the VDOE website.)

The Superintendent of Public Instruction may direct the removal of access to resources on the VDOE website but may not limit the use of those resources by local school divisions, local leaders or K-12 stakeholders. **Further, use of these items or similar curricula and pedagogical practices do not violate commonwealth law or regulation.**

School systems and schools cannot ban books simply because they dislike the ideas contained in the books. Further, they still cannot “rescind” or ban books just because they cover topics that address gender, sexuality, race or religion. While schools have discretion to set the curriculum, there must be actual education related reasons for removing a book.

Banning educational materials is an action that remains unpopular with the vast majority of the public (Barnum, 2022). Virginia polling after EO1 was handed down suggested that voters still support teaching how racism continues to impact U.S. society (63%) and oppose a ban on the teaching of critical race theory in public

schools (57%) (Bromley-Trujillo & Kidd, 2022).

With regard to the Governor’s schools as cited in directive 10, the Youngkin administration filed a legal brief arguing against Thomas Jefferson High School for Science and Technology’s (TJ) new admissions process designed to promote more access for historically-underserved students (Miyares, 2022). A federal district court judge sided with the administration, but that ruling was put on hold by the appellate court. The U.S. Supreme Court rejected a request to temporarily block the new admissions process. Thus, TJ will continue to use the new admissions process this year while the Fourth Circuit takes up the review again.

Local Action Needed on Materials, Resources, Policies and Programs

K-12 leaders and school division personnel may continue to access, share and use the “rescinded” materials and speak about the removal of these materials from the VDOE website. A list of links to the resources removed from the VDOE website is provided in the Appendix.

EO1 does not preclude educators from continuing to use their judgment to make educational decisions in the best interests of the students served. Further, educators in local school divisions still enjoy a measure of academic freedom when it comes to judgment about pedagogical decisions that would expose students to a diversity of histories and perspectives in preparation for citizenship in a multiracial society. They should be prepared to explain how policies and curricula adopted or maintained address inequities for students and emphasize our full and complex history and align to commonwealth standards. **Education leaders should resist censoring materials on topics that are crucial for students to understand their own identity and the world around them.** All students need culturally sustaining curricula and access to diverse content that addresses race, religion, gender, sexuality and other information relevant to historically marginalized communities.

Governor's schools and other Virginia schools that rely on selective admissions practices may continue to initiate and implement policies to expand access to their schools. Although the outlines of this policy are still being debated in court via *Coalition for TJ v. Fairfax County School Board* (2022), the legislature has passed a bill that largely reiterates the current status of admissions law without substantive changes (Virginia

Leg. Code ch. 4, § 22.1-26.2) (see Note 4). The legislation prohibits discrimination on the basis of race, sex, color, ethnicity or national origin in the process of admitting students, the standard already existing in law (*Grutter v. Bollinger*, 2003). Creating diverse student bodies is still viewed as an important goal for schools, and schools may still use holistic admissions processes that are applied in a race neutral manner.

Three E01 Directives Focused on Standards and Curriculum

- ▶ **Directive 6** directs the Superintendent of Public Instruction to examine changes made to the Commonwealth of Virginia's public education curriculum within the last 48 months to "identify inherently divisive concepts, including concepts or ideas related to critical race theory."
- ▶ **Directive 8** directs the Superintendent of Public Instruction to end the Virginia Math Pathways Initiative.
- ▶ **Directive 13** directs the Superintendent of Public Instruction to "initiate changes" within the ongoing curriculum revision process. The order defines these changes as ensuring a "thorough and comprehensive" history education yet also as restricting a full accounting if the curriculum is influenced by "inherently divisive concepts."

Analysis of E01's Directives Focused on Standards and Curriculum

Article VIII Section 2 of the Virginia Constitution grants the Virginia Board of Education authority to determine the Standards of Quality (SOQs), which are codified in commonwealth law and consist of Virginia's requirements of its public schools and school divisions (Virg. Leg. Code ch. 13.2, § 22.1-253.13:1). The SOQs are subject to revision only by the General Assembly.

The Standards of Learning are the instructional aims and objectives in the SOQs. The Virginia Board of Education establishes the SOLs to set out what Virginia public school students should know and be able to do. Authority for approval of the Standards of Learning therefore resides with the Virginia Board of Education, not the Superintendent of Instruction.

The commonwealth Standards of Learning (SOLs), which set curricula for Virginia schools, are reviewed by the Virginia Board of Education on a continual multi-year cycle. Crucially, though, the SOL history standards are currently under review, nearing the end of a two-year process involving significant public input and involvement of subject-area experts. With the Governor's appointment of five new members to the Virginia Board of Education (VBOE), however, the process has been altered. Additional public input has been delayed. This presents opportunities for alterations of substance to the history standards in the final stages of review.

The Virginia Math Pathways Initiative represented a collaboration between VDOE, the State Council of Higher Education for Virginia and the Virginia Community College System. It sought to expand access to rigorous mathematics courses and integrate real world problem-solving and statistical literacy into the curriculum for 21st century learning, among other efforts. The

Note 4: *Coal. for TJ v. Fairfax Cnty. Sch. Bd.* (E.D. Va. 2022), See also Order 596 U.S. Monday, April 25, 2022, denying order to vacate the stay and leaving the current TJ admission process in place.

proposed curriculum changes would have been taken up by the Virginia Board of Education when it reviewed the math standards for the 2023 update.

Local Actions Needed on Standards and Curriculum

School and system leaders do not need to change local curriculum or pedagogical strategies in response to EO1 and the 30- and 90-day reports as long as they are aligned to the current Virginia standards.

Local school divisions should continue efforts to address ongoing education inequity by providing diverse, culturally-sustaining materials and pedagogy. Student access to diverse curricula is protected by federal law and the U.S. Constitution. Specifically, students have free speech rights that prohibit denying access to diverse ideas and information (see Note 5) conferred by the First Amendment to the U.S. Constitution. Additionally, school divisions in Virginia have significant authority to set curricular standards and may reasonably promote curricula that covers history accurately and discusses systems of marginalization and oppression (see Note 6).

At the same time, it will be important for local leaders and stakeholders to engage with the VBOE process to revise the Standards of Learning. Currently, the VBOE is in the approval process for the ongoing history standards revision. The EO1 introductory language below provides a reminder of the espoused goal of the Youngkin administration related to teaching history:

We must equip our teachers to teach our students the entirety of our history – both good and bad. From the horrors of American slavery and segregation, and our country’s treatment of Native Americans, to the triumph of America’s Greatest Generation against the Nazi Empire, the heroic efforts of Americans in the Civil Rights Movement, and our country’s defeat of the Soviet Union and the ills of Communism, we must provide our students with the facts and context necessary to understand these important events.

Citing this language can be a strategy to hold the Virginia Board of Education accountable for approving standards that reflect our commonwealth and nation’s full history. Once the history Standards of Learning are approved by the Virginia Board of Education, aligning lessons to the commonwealth-approved curriculum will provide leaders with a structure to support teacher choices in the event of external challenges to a particular topic or activity.

The timeline is underway for the revision of the Math SOLs (VDOE, Jan. 2022). As the VBOE takes up the math standards, local divisions and leaders should be prepared to advocate for rigorous, 21st century mathematics learning for all students.

School and system leaders do not need to change local curriculum or pedagogical strategies in response to Executive Order 1 and the 30- and 90-day reports as long as they are aligned to the current Virginia standards.

Note 5: See *Bd. of Educ. v. Pico*, 457 U.S. 853, 868 (1982) (plurality opinion) asserting these rights hold particularly true for libraries. See also *Tinker v. Des Moines School Dist.*, 393 U.S. 503, 506, 89 S.Ct. 733, 736, 21 L.Ed.2d 731, stating students do not “shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.”

Note 6: Courts have generally recognized that the public schools possess the right to regulate speech that occurs within a compulsory classroom setting, and that a school board’s ability in this regard exceeds the permissible regulation of speech in other governmental workplaces or forums. See *Hazelwood Sch. Dist. v. Kuhlmeier*, 484 U.S. 260, 267, 108 S.Ct. 562, 98 L.Ed.2d 592 (1988). Among other laws held unconstitutional, the courts have struck down legislation and policies: Prohibiting the teaching of the theory of evolution, *Epperson v. State of Arkansas*, 393 U.S. 97, 107 (1968); banning ethnic studies programs in Arizona, holding that “limitations on school curricula that restrict a student’s access to materials otherwise available may be upheld only where they are reasonably related to legitimate pedagogical concerns,” *Arce v. Douglas*, 793 F.3d 968 (9th Cir. 2015); removing a film at the direction of the school board solely because it objected to the ideas expressed in the film, *Pratt v. Indep. Sch. Dist.* No. 831, Forest Lake, Minn., 670 F.2d 771, 777 (8th Cir. 1982).

One EO1 Directive Focused on VDOE's Training and Professional Development

► **Directive 4** directs the Superintendent of Public Instruction to review the Department of Education's cultural competency training to determine if it or any portion promotes "inherently divisive concepts" and to take action consistent with the laws of Virginia to modify such training to end the use of "inherently divisive concepts."

Analysis of EO1's Directive on VDOE's Training and Professional Development

This directive does not apply to training and professional development offered in local school divisions. However, in response to Directive 4, the VDOE made significant changes to the substance and depth of its training for culturally responsive teaching, or pedagogy responsive to student experiences, perspectives and customs, as required in commonwealth law (Gay, 2018). The training decreased in length from a five-hour module-based instructional model to a 45 minute video. The newly-instated content also shifted substantially away from the focus of the training: culturally responsive teaching.

Exceeding the scope of this EO1 directive, VDOE has moved beyond "identifying executive and legislative actions" to policing compliance with EO1 to stakeholders to whom it does not apply. For its VDOE Mental Health in Schools Conference, for example, attendees had to acknowledge this statement to RSVP: "I understand that the content of my presentation must comply with the directives outlined in Executive Order 1."

Local Action Needed on Training and Professional Development

Local school divisions should not enact policies or implement administrative practices to limit educator access to particular scholarly theories or content. Education leaders and teachers should seek out training that covers actual tenets of culturally responsive teaching and culturally

responsive leadership and provides engaging instruction with opportunities for application to practice.

School divisions should protect their teachers and students and encourage accurate and truthful lessons that prepare students for the world. Division guidance on professional development should stress this emphasis.

Educator training that focuses on accurate academic information, historical facts and the systemic nature of complex social issues, such as racism and other forms of oppression, helps to avoid the prohibited focus on individual blame and provide a comprehensive understanding of society (Castillo et al., 2022). In fact, culturally responsive teaching has been shown to increase student involvement and academic achievement (Wah & Nasri, 2019).

School divisions should protect their teachers and students and encourage accurate and truthful lessons that prepare students for the world. Division guidance on professional development should stress this emphasis.

Three EO1 Directives Focused on Commonwealth Standards and Accountability

► **Directive 11** directs the Superintendent of Public Instruction to “increase the transparency and honesty” of performance measures with attention to being sure that these standards don’t “obscure or conceal disparities in performance among student groups,” prioritizing elementary reading and math grade-level proficiency and ensuring that reading and math SOL proficiency standards are “rigorous.” It directs the Superintendent of Public Instruction to increase the number of academic-year Governor’s Schools and maintain standards of excellence for students. It also directs the Superintendent of Public Instruction to ensure parents have open access to information on schools’ primary instructional materials and “fair and open” policies exist to address concerns.

EO1’s ninth and 21st directives required the Superintendent of Public Instruction to issue a report within 90 days to “identify any necessary executive and legislative actions needed to end use of all inherently divisive concepts in public education” and to report on “the status of efforts to close the ‘achievement gap’ in K-12 education, with recommendations for additional executive and legislative actions” to address career and college readiness of Virginia’s high school graduates.

Analysis of EO1’s Directives on Standards and Accountability

The 90-day report highlights trends in student achievement on commonwealth and federal test scores. The Virginia Board of Education prepares an *Annual Report on the Condition & Needs of Public Schools in Virginia* that has flagged similar issues in recent and past years (2022).

The 90-day report, which was prepared without the input of the Virginia Board of Education, makes several problematic arguments. First,

it asserts that the recent focus on equity distracted from student achievement. The idea that current achievement levels are related to a focus on inequitable learning opportunities is unsubstantiated by historical trends or research.

Additionally, it includes a framework that presents a narrow view of discrimination that does not recognize historic barriers to educational opportunity or the impact of systemic racism on continuing racialized disparities in a wide variety of educational metrics, including academic outcomes to gifted identification to access to advanced coursework to disciplinary practices.

Virginia’s public schools are facing numerous conditions that are not addressed in this report, including:

- The dramatic impact of the pandemic on learning and the intertwined racial and socioeconomic inequities;
- Ongoing concerns for health and safety as we continue to struggle with the pandemic;
- Ongoing pandemic impacts on students, particularly those who lost primary caregivers and sources of economic, social and emotional stability (NIH, 2021);
- The related and growing mental health needs of students and staff;
- The related teacher and school leader stress, burnout and attrition;
- Spiking and ongoing staff and teacher shortages, with added work and student responsibilities as classes and other key school functions must be covered by existing staff;
- The shift in Virginia’s student and family demographics over the last 20 years;
- The unmet needs of Virginia students in poverty, students with disabilities and emergent bilingual students; and
- Gaps that were closing pre-pandemic (see Note 7).

Note 7: See also Masters, K. (March 10, 2022). Va. Superintendents Push Back on Youngkin Administration’s ‘Divisive Content’ Report. Virginia Mercury. <https://www.virginiamercury.com/2022/03/10/va-superintendents-push-back-on-youngkin-administrations-divisive-content-report>

In addition to overlooking these crucial challenges and opportunities, the 90-day report identified policy prescriptions, like strict test-based accountability and expanded school “choice,” that the administration will likely pursue in coming years. The recent expansion of laboratory schools is one component of a concerted effort to privatize public education through market-based strategies (see Note 8). Efforts to further privatize public education through school vouchers, neovouchers and charter school expansion would have to win approval to advance through the General Assembly. But such measures should be opposed to maintain the commonwealth’s current requirement to operate effective public schools.

Local Action Needed on Standards and Accountability

Public K-12 stakeholders should communicate clearly about the importance of more nuanced school evaluation and accountability systems, as well as ongoing and increasing student needs arising from the pandemic. Public K-12 stakeholders should prepare to make a robust, affirmative case regarding the importance of public education for a multiracial democracy.

Note 8: Cite to Devos agenda, cites from private school paper, Georgia bills that didn’t move through in 2021 session.

Chilling Impact

But Limited Authority to Change Local Equity Work

EO1 has been publicly reported as being focused on Virginia schools, yet understanding the scope of authority of the executive order is crucial for education leaders and policymakers. For example, 92% of EO1 is directed to the Superintendent of Public Instruction, who supervises operations of the VDOE. The remaining portion is aimed at executive employees. This means that **no directive in EO1 applies to local school division policy or practice.**

Shared understanding of where commonwealth authority over local public schools lies can help empower school and system leaders to continue important work. Article VIII Section 1 of the Virginia constitution establishes: “The General Assembly shall provide for a system of free public elementary and secondary schools for all children of school age throughout the Commonwealth and shall seek to ensure that an educational program of high quality is established and continually maintained.”

Article VIII Section 6 of the Virginia constitution vests supervision authority over schools in each school division in local school boards. Article VIII Section 4 of the Virginia constitution vests supervision of the commonwealth school system with the Virginia Board of Education.

The governor’s authority is limited to appointment of those members, subject to confirmation by the General Assembly. Of note: the constitution establishes that Virginia Board of Education “terms shall be staggered, so that no more than three regular appointments shall be made in the same year.” The pending appointments of five new members in one year is not the norm and calls into question issues of constitutionality.

Central administrators, school leaders, school boards, teachers and other K-12 stakeholders in local school divisions are not required to “comply” with EO1, nor should access to commonwealth resources, programs, policies or assistance be limited to those who “comply” or sign off on compliance with these directives. Further, there is no private right of action under EO1, meaning parents cannot sue teachers or divisions if they believe them to be in violation of the order.

However, the lack of authority in EO1 (or the subsequent reports) to compel or restrict efforts of local school divisions is not the same as its ability to influence perceptions and actions. Even with clear understanding of local control and commonwealth constitutional authority, EO1 and accompanying gubernatorial actions can have effects that ripple to school divisions, individual schools and classrooms. The cumulative actions of the Governor’s promoted education legislation, public statements and use of commonwealth resources should be viewed together to better understand the forces that may influence the reactions of school division leaders.

The executive order was issued just a few days prior to the Governor’s creation of a commonwealth mechanism, referred to as a “tip line,” for the parents to report “any instances where they feel that their fundamental rights are being violated, where their children are not being respected, where there are inherently divisive practices in their schools” (Mirshahi, 2022).

The 30- and 90-day reports further worsened fear among educators that Virginia school systems have been doing something wrong in their

Central administrators, school leaders, school boards, teachers and other K-12 stakeholders in local school divisions are not required to “comply” with Executive Order 1.

attempts to recognize and remediate the historic inequities that shape disparities in present-day student outcomes. Public school leaders, teachers and staff on the front lines have tried to determine how this would impact their practice, pedagogy and engagement of students and families in the areas of diversity, equity and inclusion.

Confusion about what is and is not allowable under EO1 can chill proactive efforts to address inequities. Fundamentally, EO1 misinterprets

equity initiatives as “divisive,” rather than as attempts to remediate inequities and create a sense of belonging for all students. It is thus critical to understand the limits of EO1’s authority as well as the historical and current context. Censorship and self-censorship – born of confusion or fear of retribution – can negatively impact students who are experiencing these inequities and stymie efforts by teachers and school administrators to engage in pedagogical practices of diversity, equity and inclusivity.

A Call to Action

Center Student Rights and Needs, Engage in Commonwealth Processes

The chilling effect of these gubernatorial administration actions should not freeze school leaders' efforts to address student inequities impacting the learning and life trajectories of students. Resisting the chilling impact takes energy and action at a time when needs are great and leaders are stretched thin. But students also depend on education leaders, and student inequities remain daunting across myriad categories. These actions are unfolding in times of great need and school leaders need to be vigilant.

Within each local school division, Virginia's school leaders must not be deterred from staying focused on ensuring every Virginia public school student is getting what they need, including equitable access to: enriching learning opportunities, diverse, equitable and inclusive schools and classes, educators and leaders who provide culturally affirming and responsive practices and experiences, and resources to address physical and mental well-being of students and staff.

The following key actions illustrate what school and system leaders and stakeholders can do individually and collectively to keep the focus on students, their learning and the opportunities they all deserve.

1. Continue dialogue with staff and teachers centering students' unmet needs, with particular attention to those with the greatest unmet needs. Efforts to attend to those needs, including the need to feel a sense of belonging in a school community, must continue. You should raise concerns in direct conversation with other leaders and teachers if you feel EO1-related adjustments to pedagogy, practice or policy are hampering your ability to meet students' needs.

2. Document EO1-related adjustments to pedagogy, practice, policy and/or related disciplinary action. This data can inform your ongoing conversations about what is needed to address existing educational inequity, in addition to a potential legal challenge if your rights or students' civil rights are being violated.

3. Civil rights violations related to EO1 may be reported to the ACLU of Virginia at <https://acluva.org/en/online-intake-form>, or Legal Aid at 1-866-LEGLAID or <https://cvlas.org/apply-for-help-online>. Federal educational civil rights complaints are filed with the Office for Civil Rights at <https://www2.ed.gov/about/offices/list/ocr/docs/howto.html>.

Actions of legal concern may include the following.

- Directing educators to no longer teach certain ideas, materials or concepts related to race or gender even though these ideas, materials and concepts can be educationally valuable for students;
- Disciplining educators, or being disciplined as an educational leader, for teaching certain ideas, materials or concepts related to race or gender even though these ideas, materials and concepts can be educationally valuable for students;
- Targeting educators, or being targeted as an educational leader, for disciplinary action based on racial-ethnic or gender identity;
- Removing access to certain books because of race- or gender-related concepts even though these books can be educationally valuable to students;

- Requiring adherence to EO1 in situations to which it does not apply (local curriculum, policy, disciplinary action, etc.); or
- Limiting your access to or use of public resources, including training, by forced adherence to what is labeled or mislabeled as “inherently divisive concepts” or “critical race theory.”

4. Follow commonwealth actions and engage in the policy and budget-making processes. The “what’s next” will depend heavily on staying attuned to the Virginia Board of Education and General Assembly for the next three years.

Virginia Board of Education: Partisan action taken during the 2022 legislative session removed members of the board of education re-appointed by Governor Northam, paving the way for Governor Youngkin to have a majority of appointments to the board much earlier than previous administrations. Breaking with the precedent of staggered board terms also may drive abrupt shifts in processes as well as policy. Following these shifts and the ongoing work of the VBOE during and beyond this transition is essential to leaders striving to meet the needs of students and address educational inequities.

It will be important to follow the Virginia Board of Education’s actions, particularly regulatory action, and to provide input throughout these processes. Public comment is held at every Virginia Board of Education meeting. The upcoming Standards of Learning revision processes also will offer opportunity for input.

Commonwealth Education Budget: The power of the budget does lie with the governor, so similar input and advocacy on the commonwealth education budget will be critical. Although the budget has been finalized for the 2022-2024 biennium, the budget cycle begins anew each fall.

Virginia General Assembly: Similarly, the General Assembly Session is held beginning in January every year, but commonwealth legislators respond to constituents and develop legislation responsive to constituent requests throughout the year. Virginia is distinct from other states that have codified anti-equity measures into law, but that can change with each legislative session.

Students, families and school leaders must be especially vigilant given recent moves to attempt to limit curriculum access and censor classroom content. For example, Senate Bill 656 passed during the 2022 Virginia General Assembly session and subsequent model guidance offered by the VDOE gives parents the right to object to sexually explicit content, but it uses an antiquated definition of sexually explicit conduct that may implicate materials addressing LGBTQ+ topics (Zaru, 2022; VDOE, Apr. 2022).

In addition to participating in the policymaking process, your participation in the political process is key too. Elections matter, so too does voting. Education leaders should align their voting choices and participation with candidates that truly support K-12 education and the learning needs of all students.

Conclusion

Virginia's school leaders are tasked with myriad responsibilities at a time of significant challenges. It is critical that they stay focused on the purpose of public education and the needs of students by continuing to advance the following.

- The democratic purposes of K-12 education as the primary path for creating an educated and engaged citizenry in an increasingly multiracial democracy.
- Transparency in student outcome data focused on the needs of students and the inequities of opportunity that foster gaps in achievement outcomes.
- An inclusive curriculum that centers the contributions of those pushed aside in the curriculum for earlier generations of K-12 students. This will require:
 - Ensuring the recommendations of the African American History Commission remain in revised history standards, and
 - More rigorous math pathways for every student, not pathways that narrow opportunity for some.
- Professional development that helps educators serve a diverse population, including a robust and scholarship-informed curriculum for culturally responsive leadership.
- Efforts to increase workforce diversity, including minoritized teacher and leader pipelines.
- Disseminating reports and sharing policy solutions to combat deepening school segregation by race and class.
- Mechanisms, tools and resources to assess and address:
 - Barriers to equal opportunities and resources;
 - Increases and exacerbated inequities (discipline, disproportionality, etc.); and
 - Efforts to deny students and families civil rights.
- Student voice and needs:
 - Student input and experiences must inform student-centered policies that promote well-being of all students and address the needs of specific groups who have been historically underserved.
 - In practice, this means school leaders should offer meaningful seats at the tables where decisions are being made, enable student organizations to flourish, and cultivate student leadership and voice in the policies that impact their school experiences.

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Appendix

Materials noted as “rescinded” remain accessible through the following links.

Training materials, including a video library, from VDOE’s EdEquityVA initiative are now housed on the VEA website

<https://www.veanea.org/edequity>

Navigating EdEquityVA: Virginia’s Road Map to Equity

<https://www.doe.virginia.gov/edequityva/navigating-equity-book.pdf>

Virginia LEARNS: Navigating Virginia Education in Uncertain Times

<https://www.doe.virginia.gov/instruction/learns/virginia-learns.pdf#page=12>

Return to School: Planning Equity Audit

https://www.doe.virginia.gov/support/health_medical/covid-19/return-to-school-planning-equity-audit.pdf

School Segregation by Boundary Line in Virginia

https://cecr.ed.psu.edu/sites/default/files/School_Segregation_by_Boundary_Line_in_Virginia_Nov_2020.pdf

Signatories

A number of legal, policy and leadership experts contributed to the development of this document. They include the following.

Kim Bridges, Assistant Professor of Education Leadership, VCU

Joshua P. Cole, Ph.D.

Rachael Deane, Esq.

Dr. Dana R. Jackson, Assistant Professor and Director of Clinical Practice in Educational Leadership and Policy Studies, University of Richmond

Chinh Q. Le, Visiting Professor of Practice, University of Virginia School of Law

Jesse Senechal, Virginia Commonwealth University School of Education

Tom Shields, Associate Dean for Academic and Student Affairs, Chair of Graduate Education, Associate Professor of Education and Leadership Studies, School of Professional and Continuing Studies, University of Richmond

Genevieve Siegel-Hawley, Virginia Commonwealth University

Terrence Wilson, Esq., IDRA

Youth Justice Program, Legal Aid Justice Center



Intercultural Development Research Association

Celina Moreno, J.D., President & CEO
5815 Callaghan Road, Suite 101 • San Antonio, Texas 78228
210.444.1710 • www.IDRA.org • contact@idra.org



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