

COMMONWEALTH OF VIRGINIA  
BOARD OF EDUCATION  
RICHMOND, VIRGINIA

**MINUTES**

September 27, 2006

The Board of Education and the Board of Career and Technical Education met at the James Monroe State Office Building, Jefferson Conference Room, 22<sup>nd</sup> Floor, Richmond, with the following members present:

Dr. Mark E. Emblidge, President  
Dr. Ella P. Ward, Vice President  
Mrs. Isis M. Castro  
Dr. Thomas M. Brewster  
Mr. David L. Johnson

Dr. Gary L. Jones  
Mr. Kelvin L. Moore  
Mr. Andrew J. Rotherham  
Mrs. Eleanor B. Saslaw

Dr. Billy K. Cannaday, Jr.  
Superintendent of Public Instruction

Dr. Emblidge, president, presided and called the meeting to order at 9 a.m.

***MOMENT OF SILENCE/PLEDGE OF ALLEGIANCE***

Dr. Emblidge asked Dr. Brewster to lead in the Pledge of Allegiance and a moment of silence.

***APPROVAL OF MINUTES***

Mrs. Saslaw made a motion to approve the minutes of the July 26, 2006, meeting of the Board. The motion was seconded by Dr. Ward and carried unanimously. Copies of the minutes had been distributed to all members of the Board of Education.

***RECOGNITION FOR OUTSTANDING SERVICE***

- Mr. Thomas G. Johnson, Jr., Member of the Board of Education, 2003-2006
- Mr. Thomas M. Jackson, Jr., Member of the Board of Education, 2002-2006, and President, 2003-2006

***PUBLIC COMMENT***

The following persons spoke during public comment:

Dan Zacharias  
Pastor Doug Wright

Beverly Lammay  
Angela Ciolfi

Dr. Lawrence Sacks

## ***REPORTS ON BOARD OF EDUCATION COMMITTEES***

### **Report from Board of Education Committee Chairs**

The chair of each committee gave a brief overview for each committee:

#### **Committee on School and Division Accountability – Mr. David Johnson, Chair**

The purpose of this committee is to study chronically low-performing schools and school divisions and make recommendations on increasing accountability for effective instruction and achievement. The committee initially will focus on schools that lose state accreditation because of low student achievement and schools and divisions that have yet to meet annual benchmarks in reading and mathematics under the *No Child Left Behind Act of 2001* (NCLB).

#### **Committee on Quality Preschool Programs – Mrs. Eleanor Saslaw Chair and Mr. Kelvin Moore**

The purpose of this committee is to strengthen early childhood education in the Commonwealth. The committee will:

- Establish guidelines for school divisions for developing, selecting, and evaluating preschool curricula for quality and alignment with Virginia's Foundation Blocks for Early Learning, which constitute the Commonwealth's standards for appropriate early childhood education in English, mathematics, science, and history/social science;
- Develop a plan to increase the number of licensed preschool teachers and qualified teacher assistants in Virginia for current and future needs; and
- Collaborate with school divisions, community colleges, and higher education to assess the current and future need for preschool teachers and qualified teacher assistants.

#### **Committee on Literacy - Mrs. Isis Castro, Chair and Dr. Thomas Brewster**

The purpose of this committee is to develop strategies to raise the level of literacy of children, adolescents, and adults in the Commonwealth. The committee will consider ways to:

- Increase the number of students reading on grade level by the third grade;
- Sustain literacy and a love of reading among students as they move from the elementary-school environment to middle school and high school;
- Assist limited English proficient (LEP) students in obtaining an education; and
- Strengthen literacy programs and policies for adult learners.

#### **Committee on Graduation and Dropout Rates - Dr. Ella Ward and Mr. Andrew Rotherham, co-chairs**

The purpose of this committee is to research and recommend policies to reduce the number of students who drop out of high school and to improve graduation rates, especially among minority students. The committee will:

- Examine policies and data related to middle-to-high school transition, ninth-grade retention, truancy, and dropout and graduation rates;
- Identify best practices to reduce ninth-grade retention and increase the percentage of students who complete high school by earning a diploma; and
- Recommend policies to incorporate the raising of graduation rates into the commonwealth's accountability system.

Committee on Standards of Quality - Dr. Gary Jones, chair

The Constitution of Virginia requires the Board of Education to determine and prescribe standards of quality for the public schools of Virginia, subject to revision only by the General Assembly. These standards are known as the Standards of Quality (SOQ) and form part of the *Code of Virginia*. These standards are available online.

The 2005 General Assembly revised the SOQ by approving legislation that revised terms, clarified language, and made changes affecting school divisions, local school boards, school division superintendents, and the Board of Education. These changes are described in Superintendent's Memo No. 142, which was issued on July 22, 2005.

Dr. Jones asked that the committee will recommend additional revisions for first review at the October 2006 Board of Education meeting.

***CONSENT AGENDA***

Mrs. Castro made a motion to approve the items on the consent agenda. The motion was seconded by Dr. Ward and carried unanimously.

- Final Review of Financial Report on Literary Fund
- Final Review of Recommendations Concerning Literary Fund Applications Approved for Release of Fund or Placement on a Waiting List
- First Review of Proposed Repeal of the *Regulations Governing the Operation of Proprietary Schools and Issuing of Agent Permits* (8 VAC 20-350-10 et seq.)
- First Review of the Notice of Intended Regulatory Action (NOIRA) to Amend the *Regulations Governing Educational Services for Gifted Students* (8 VAC 20-40-10 et seq.)

***Final Review of Financial Report on Literacy Fund***

The Department of Education's recommendation to approve the financial report (including all statements) on the status of the Literary Fund as of June 30, 2006, was approved with the Board's vote on the consent agenda.

**Final Review of Recommendations Concerning Literary Fund Applications Approved for Release of Fund or Placement on a Waiting List**

The Department of Education's recommendation to approve the actions described in the following two elements was approved with the Board's vote on the consent agenda:

1. To the extent funds are available, a recommendation for initial release of funds is presented for projects currently on the First Priority Waiting List or otherwise eligible for priority funding. To the extent funds are not available, new requests for the initial release of Literary Funds cannot be approved. As a result, such requests must be deferred and placed on either the First or Second Priority Waiting List in accordance with the Literary Fund regulations.
2. Two new projects, totaling \$15,000,000, eligible for placement on the First Priority Waiting List, subject to review and approval by the Office of the Attorney General pursuant to §22.1-156, *Code of Virginia*.

The Department of Education's recommendation for projects on the First Priority Waiting List to be deferred because no funds are available was approved with the Board's vote on the consent agenda.

**First Review of Proposed Repeal of the Regulations Governing the Operation of Proprietary Schools and Issuing of Agent Permits (8 VAC 20-350-10 et. seq.)**

The Department of Education's recommendation to waive first review, approve the repeal of this regulation, and authorize the Department of Education staff to proceed with the requirements of the Administrative Process Act, was approved with the Board's vote on the consent agenda.

**First Review of the Notice of Intended Regulatory Action (NOIRA) to Amend the Regulations Governing Educational Services for Gifted Students (8 VAC 20-40-10 et seq.)**

The Department of Education's recommendation to waive first review and authorize staff to proceed with the requirements of the Administrative Process Act regarding the Notice of Intended Regulatory Action for promulgating regulations, was approved with the Board's vote on the consent agenda.

***ACTION/DISCUSSION ITEMS***

***First Review of a Request to Extend Approval of an Alternative Accreditation Plan and Approval of an Accreditation Rating for Hampton Harbour Academy from the Hampton City Public Schools***

Mrs. Kathleen Smith, director of the office of school improvement, introduced Dr. Patricia Johnson, assistant superintendent for curriculum and instruction, and Ms. Cynthia Cooper, director of adult education and alternative education, Hampton City Public Schools.

Hampton City Public Schools received the first approval of a one-year alternative accreditation plan for Hampton Harbour Academy on October 26, 2005, with the provision that future extensions would be contingent upon the submission of an evaluation showing that the state objectives of the program and evaluative criteria have been met.

Hampton Harbour Academy (HHA) is an alternative charter school that serves students in grades six through eight who are at least two years behind their grade cohort group. These students have been retained more than once, some students are reading as much as four years behind their chronological age group and are equally behind in mathematics.

Hampton Harbour Academy reports that it has not met its criteria for full accreditation. However, it is applying for a rating of Accreditation Withheld/Improving School Near Accreditation in accordance with 8 VAC 20-131-300. Hampton Harbour Academy has met the 70% pass rate in English and the 25% increase over 1999 SOL pass rates in areas below 70%. This school did not exist in 1999, but the pass rate in mathematics was 16% in the first year, 2002-2003. The pass rate for 2006 shows a gain of 34% over that initial posted score. The final criteria for this rating, 60% combined pass rate in other subjects, does not apply in this case. The alternative accreditation plan for Hampton Harbour Academy specifies only English and mathematics as requisite subjects for accountability measures.

Mr. Johnson made a motion to waive first review and approve the request to extend the alternative accreditation plan for three years and approve the rating of Accreditation Withheld/Improving School Near Accreditation for Hampton Harbour Academy. The motion was seconded by Mrs. Saslaw and carried unanimously.

***First Review of a Request to Extend Approval of an Alternative Accreditation Plan and Approval of Accreditation Ratings for Mt. Vernon Middle School and New Bridge School in Henrico County Public Schools***

Mrs. Kathleen Smith, director of the office of school improvement, introduced Mr. Fred Morton, division superintendent, Henrico County Public Schools. Mr. Morton

introduced staff attending from Henrico County Public Schools. Mr. Morton said these are the people that worked on this item:

Mr. Ronald Rodriquez, principal, Mt. Vernon Middle School  
Dr. Hope George, principal, New Bridge School  
Dr. Lynn Thorpe, assistant superintendent, instruction  
Dr. Martha Blumenthal, director, research and planning  
Mrs. Tiffany Hinton, education specialist, research and planning  
Dr. Patrick Kinlaw, assistant superintendent, administrative services

Henrico County Public Schools received approval by the Board of Education for one-year alternative accreditation plans for New Bridge School and Mt. Vernon Middle School on November 30, 2005. These approvals included the provision that future extensions would be contingent upon the submission of an evaluation from each school showing that the stated objectives of the program and evaluative criteria had been met.

Based on spring 2005-2006 SOL assessments, New Bridge School met the required composite performance target of 75% at the elementary level with a pass rate of 88.33%, but with a middle level composite pass rate of 62.68%, did not meet the 70% target required in the alternative accreditation plan. Mt. Vernon earned a composite rate of 65.41% which does not meet the 70% target in the alternative accreditation plan.

However, both schools have increased their 1999 SOL pass rates by more than 25%, which is required for a rating of Accreditation Withheld/Improving School Near Accreditation. New Bridge shows a gain of 27.65% points over the composite rate for 2003, the first year of the middle school program. Mt. Vernon shows a gain of 30.41% points over the composite rate for 1999.

Mrs. Castro made a motion to waive first review, approve the request to extend the alternative accreditation plans for three years and approve the rating of Accreditation Withheld/Improving School Near Accreditation for New Bridge School and Mt. Vernon Middle School. The motion was seconded by Dr. Brewster and carried unanimously.

**First Review of a Request from Fairfax County Public Schools for a Pilot Program Using Additional Warning Lights on School Buses**

Dr. Cannaday presented this item. Dr. Cannaday said that the new specifications for Virginia's school buses were presented to the Board for first review at the May 2006 meeting.

At the May meeting, Dr. Jones presented a request from Fairfax County Public Schools for approval of a pilot program to place additional warning lights on the front sides of school buses. Dr. Jones said that the purpose of these lights would be to serve as additional warning lights to signal that the school bus is about to stop to load or unload students or is stopped and is in the process of loading or unloading students. Fairfax

submitted this request because they believe the additional warning lights will improve recognition of the actions being taken by school buses, especially at intersections, and will ultimately reduce the number of motorists that pass stopped school buses, thus improving student safety.

Dr. Cannaday said that the request had been discussed with the specifications committee and a representative of the state police. Initial reactions from both entities did not support Fairfax's request. As a result, the additional lights were not included in the new school bus specifications that were presented to the Board. Upon hearing this information, the Board requested that staff revisit the issue to determine if there was a way to honor Fairfax's request to improve school bus safety and to address the concerns of the affected parties and to request their support.

Department staff met with representatives of the school bus dealers in Virginia and the specifications committee. The Board President, the Superintendent of Public Instruction, and the Assistant Superintendent for Finance met with the Superintendent of State Police and his staff to discuss this issue.

The school bus specifications committee and the school bus dealers concluded that warning lights could be added to school buses at an estimated cost of between \$500 and \$700 per bus, including labor and installation costs of the dealer. These costs could be lower if the lights were installed by the school division school bus staff.

The Superintendent of State Police indicated that he would support the approval of a pilot in Fairfax County Schools as well as other school divisions so long as the lights meet Federal Motor Vehicle Safety Standards (FMVSS), Society of Automotive Engineers (SAE) Standards, or are of a type that is approved by the Department of the State Police. The Superintendent of State Police also suggested that the participants in the pilot program be required to collect information about the effectiveness of the additional lights and that this information be reported to the Department of Education to determine if the lights should be required on all school buses in the future.

Dr. Jones made a motion to waive first review and approve the request from Fairfax County Public Schools to initiate a pilot program to place additional warning lights on the front sides of selected school buses provided that:

1. These lights are used to signal that a school bus is about to stop to load or unload students or is stopped and is in the process of loading or unloading students and that they work in conjunction with the existing warning light system;
2. These lights meet Federal Motor Vehicle Safety Standards (FMVSS), Society of Automotive Engineers (SAE) Standards, or are of a type that is approved by the Department of the State Police;
3. Fairfax County pays all costs associated with the pilot; and

4. Fairfax County provides a report to the Department of Education no later than June 30, 2007, of the effectiveness of these additional warning lights and the pilot program overall, the cost to purchase and install these lights, and any other information that may be needed to determine if additional warning lights should be required on all school buses in the future.

The Board's vote also authorized the Superintendent of Public Instruction to approve participation in this pilot program by additional school divisions that agree to meet the above stated requirements. The motion was seconded by Mrs. Castro and carried unanimously.

### **Final Review of Pupil Transportation Specifications for School Buses**

Mrs. June Eanes, director of support services, presented this item. Mrs. Eanes said that the *Regulations Governing Pupil Transportation* approved in January 2004, deleted the sections that detailed the specifications for school buses and made them a separate document that requires periodic approval by the Board of Education. This permits the Department of Education to revise and update the bus specifications more efficiently than would be permitted under the process for revising regulations. It also permits the specifications to be refreshed more frequently to recognize new or emerging technology. The specifications for school buses are presented to the Board of Education for approval as necessary. The specifications proposed in this item represent changes that are needed at this time. The current specifications were approved by the Board of Education in November 2004.

The specifications have been updated and revised to include recent changes in equipment and technology. The changes were developed by the Department's Specifications Committee, which is comprised of pupil transportation representatives from school divisions across the state. None of the changes represent significant deviations from standard industry practices. All of the recommended specifications comply with the safety requirements of the National Highway Traffic Safety Administration.

The proposed specifications were developed with the goal of improving safety. Knowing that it is difficult to design statewide specifications that encompass the specific needs of each division's fleet, the committee considered the geographic differences of our regions, the newer technology available for new school buses, the past track record of current specification configurations, specifically the overall cost of maintenance, and any components with a record of failure that caused safety to be compromised.

The committee also made comparisons with specifications of other states and adjusted the previous specifications to improve Virginia's minimum specifications and align Virginia's specifications with other Southeastern States. Also included in the proposed revisions are recommendations to incorporate changes adopted in May 2005 by

the Fourteenth National Congress on School Transportation, “National School Transportation Specifications and Procedures.”

The proposed specifications were posted on the Department’s Web site for 30 days to provide school divisions and other interested parties the opportunity to review them and offer comments. Comments were received from all three school bus dealers in Virginia, one school bus manufacturer, and five school divisions. The comments and the recommended actions from the specifications committee are compiled and attached to this document.

The majority of the comments dealt with mechanical issues, however, a few safety issues also were identified. The most significant safety issue identified has been addressed by requiring a non-sequential system for traffic warning lights on all new school buses. This change will allow the red lights to be activated whenever the door opens, thus avoiding situations when students are getting on or off the bus and the lights are not activated due to driver failure to initiate the warning light sequence. Another change will provide school divisions with the option of placing a second school bus traffic warning sign on the left, rear side of the bus if the bus is Type C or D with a passenger capacity of 64 students or more. Finally, the specifications include an option for school divisions to add additional warning lights to the front sides of the school bus if the school division is participating in an approved pilot program.

Dr. Ward made a motion to adopt the proposed school bus specifications as proposed. The motion was seconded by Dr. Brewster and carried unanimously.

***Request to Secretary of Education to Approve the Department of General Services to Proceed with the Design Work to Consolidate the Virginia Schools for the Deaf and the Blind as Authorized by the General Assembly in the 2006 Session***

Mr. H. Douglas Cox, assistant superintendent for special education and student services, presented this item. Mr. Cox said that on July 27, 2005, two proposals for the consolidation of the two Virginia Schools for the Deaf and the Blind were presented to the Board of Education. Proposals were submitted to the Commonwealth pursuant to requirements of the Public-Private Education Facilities and Infrastructure Act – 2002 (PPEA). The Board selected the proposal submitted by the Trammell Crow Company (TCC) for further development of three specific consolidation options. Development options considered were:

1. Renovation and/or construction of a new facility at Staunton
2. Renovation and/or construction of a new facility at Hampton
3. Construction of a new facility at alternate locations in accordance with the guidelines for the new facility in the Department of Education feasibility study.

On September 21, 2005, the Department of Education, Department of General Services, and TCC presented their investigative findings and recommendations on the three consolidation options to the Board. The recommendations with associated construction costs presented were:

1. Build a new facility in the Richmond Metro area \$84,158,402
2. Build a new facility in the Charlottesville Metro area \$88,908,402
3. Renovate selected buildings and build new needed facilities at the Staunton site \$98,871,159
4. Renovate selected buildings and build new needed facilities at the Hampton site \$88,000,984.

The Board of Education is authorized, with the assistance of the Department of General Services, to proceed with planning and design to consolidate the Virginia School for the Deaf and the Blind at Staunton and the Virginia School for the Deaf, Blind, and Multidisabled at Hampton into a single campus and transfer of the students, programs services to a single campus at Staunton. The Department of General Services requires approval from the Board of Education to proceed.

Dr. Jones made a motion for staff to prepare and deliver a letter to the Secretary of Education communicating its approval for the Department of General Services to proceed as authorized in the 2006 Virginia Acts of Assembly and in accordance with the PPEA guidelines. The motion was seconded by Mrs. Saslaw and carried unanimously.

### **First Review of English Language Proficiency Standards of Learning**

Mrs. Val Gooss, coordinator, English as a Second Language, presented this item. Mrs. Gooss said that academic content standards for English language proficiency were adopted by the Board of Education in November 2002. A review and possible revision were listed as an action item in the Board of Education's Comprehensive Plan for 2005-2010. As a result of the action item in the comprehensive plan, at its meeting on October 26, 2005, the Board of Education adopted a schedule for review and revision to the English Language Proficiency Standards of Learning.

Mrs. Gooss said that in accordance with the adopted schedule, the Department of Education took the following steps to produce a draft of the revised English Language Proficiency Standards of Learning for the Board's first review:

- Solicited online comments from stakeholders, including teachers, parents, and administrators;
- Selected a committee that consisted of recommended individuals solicited from school divisions to participate in the process;
- Convened a committee to review and recommend revisions to the current English Language Proficiency Standards of Learning on March 13-16, 2006;

- Convened a subcommittee to make final recommendations on April 26-27, 2006;
- Developed a draft of the revised English Language Proficiency Standards of Learning.

Mrs. Gooss said that the following features of the standards remain unchanged:

- Four levels of English proficiency are defined for the state's limited English proficient (LEP) population. These levels are level 1, level 2, level 3, and level 4, with levels 1 and 2 for grades K-1, levels 1 through 3 for grade 2, and levels 1 through 4 for grades 3 and above.
- Within each of these levels, there are standards for oral language (listening and speaking), reading, and writing.
- The standards are numbered in sequence for each proficiency level, i.e., the standards in level 1 are numbered sequentially beginning with 1.0; the standards in level 2 are numbered sequentially beginning with 2.0; the standards in level 3 are numbered sequentially beginning with 3.0; and the standards in level 4 are numbered sequentially beginning with 4.0.

Mrs. Gooss said that the English Language Proficiency Standards of Learning support the English language development of limited English proficient (LEP) students. The goal of these standards is to provide the foundation that will enable LEP students to be successful in core academic courses.

Mrs. Castro made a motion to accept for first review the revised English Language Proficiency Standards of Learning. The motion was seconded by Dr. Ward and carried unanimously.

### **First Review of Updates to the Student Conduct Policy Guidelines**

Dr. Cynthia Cave, director, office of student services, presented this item. Dr. Cave said that the Board of Education's *Student Conduct Policy Guidelines* were first developed in 1994 in response to action by the 1993 General Assembly that required the Board to establish such guidelines, as reflected in § 22.1-279.6 of the *Code*. The guidelines were revised in 2001 and again in 2004 and 2005 to reflect changes in federal and state laws, regulations, and relevant case law. The guidelines are intended to aid school boards in developing and implementing student conduct standards and policies. Local school boards are required to adopt and revise regulations for codes of student conduct that are consistent with, but may be more stringent than, these guidelines.

The 2006 General Assembly made various changes to the *Code of Virginia* by adopting HB 58 (Fralin prior to substitute) HB 347 (Hamilton), HB 1279 (Barlow), HB 1516 (Tata), SB183/HB588 Puller/Watts), SB 561 (Stolle), and SB 656/HB 95 (Rerras/Lewis). These amendments address internet safety, exclusions from age requirements for compulsory school attendance, notification to principals from law enforcement authorities of commitment by students of certain crimes, possession of

firearms, use of a weapon with an exposed blade on school property or within school buildings, or within 1,000 feet of school property, access to juvenile records held by the Department of Juvenile Justice, and provision of information to school personnel about student criminal convictions and delinquency adjudications at enrollment. The *Virginia Student Conduct Policy Guidelines* have been revised in response to this legislation. In addition, minor edits have been made to the guidelines for clarification.

Dr. Cave said that the guidelines have been revised to reflect these changes in law, as indicated below:

- HB 58 (Fralin). The amendment to § 22.1-70.2 of the *Code* to require school divisions to add a component on Internet safety for students to acceptable Internet use policies has been referenced, as well as the guidelines to be issued by the Superintendent of Public Instruction for assisting school divisions in responding to this law.
- HB 347 (Hamilton). Reference in the guidelines has been made to the expansion of the list of persons who may participate in the GED testing program as reflected in amendments to §§ 22.1-233, 22.1-254, and 22.1-254.2 to include: (1) persons 16 years of age or older who have been expelled from school; and (2) persons required by court order to participate in the GED testing program.
- HB 1279 (Barlow). This amendment to § 22.1-279.3:1 of the *Code* requires law enforcement agencies to notify a superintendent, principal, or a designee when a student in one of the division's schools commits certain crimes that would be: (1) felonies if committed by an adult; (2) a violation of the Drug Control Act; or (3) an adult misdemeanor listed in § 22.1-279.3:1 A. The report from law-enforcement authorities shall also include whether the student is released to the custody of his parent, or, if 18 years of age or older, is released on bond. School superintendents receiving the reports must provide the information to the principal of the school in which the student is enrolled. The law is referenced under "Responsibilities of Law Enforcement Agencies."
- HB 1516 (Tata). This bill amended § 22.1-277.07 of the *Code*, and calls for the expulsion for a year of any student who possesses a firearm or destructive device, firearm muffler, or silencer, or pneumatic gun, on school property or at a school-sponsored activity. Previously the *Code* stated bringing these devices onto school property or to a school-sponsored activity as the basis for expulsion. The change is presented under "Expulsions for Weapons-Related Offenses."
- SB 183/HB588 (Puller/Watts). The legislation amended § 18.2-282.1 of the *Code* to add that it is a Class 6 felony to point, hold, or brandish a machete, or any weapon with an exposed blade of 12 inches or longer, with the intent of intimidation at an elementary, middle, or high school building or grounds or on public property within 1,000 feet of the school property. The addition to the law is noted in the guidelines.
- SB 561 (Stolle). Section 16.1-300 of the *Code* governs the confidentiality of Department of Juvenile Justice records. The section has been amended to

specify that school administrations are among the entities which may have access to these records with a court order when they have a legitimate interest in the case or the student. This change is noted under "Related Policy Issues" in the guidelines.

- SB 656/HB95 (Rerras/Lewis). Section 22.1-279.3 of the *Code* has been amended by this legislation to set forth the responsibility of a parent, guardian, other person having charge of a child, or a social service agency or licensed child-placing agency making a foster care placement, to provide information to a public school at the time of enrollment about the student's criminal convictions or delinquency adjudications for certain offenses. The guidelines have referenced this requirement under "Parental Responsibility."

Dr. Brewster made a motion to waive first review and adopt the guidelines. The motion was seconded by Dr. Ward and carried unanimously.

**First Review of the Proposed Revisions to the Guidance Document Governing Certain Provisions of the Regulations Establishing Standards for Accrediting Public Schools in Virginia (8 VAC 20-131-05 et. seq.)**

Mrs. Anne Wescott, assistant superintendent for policy and communications, presented this item. Mrs. Wescott said that from January 12, 2005 through May 24, 2006, the Board examined changes to its regulations accrediting Virginia's K-12 public schools. Proposed changes have been made in accordance with the Administrative Process Act, which included the examination and incorporation of numerous public comments. On September 7, 2006, these proposed regulations, which the Board approved at its May 24 meeting, became effective. These newly-adopted changes supersede regulations that had been in effect since September 28, 2000.

On November 30, 2000, the Board approved a guidance document, which provides additional detail concerning the interpretation and implementation of certain provisions in the accreditation standards. From time to time since then, the Board has approved additional guidance. Now that the revised regulations are in effect, the need exists to update this guidance and to compile it into one document. The update is needed to address:

- 1) Obsolete language in the current guidance documents;
- 2) Updates needed because Virginia's accountability system has matured; and
- 3) Technical assistance in the areas of consequences for those schools that fail to meet the accountability requirements.

In addition, the guidance document has also been edited for clarity and consolidates all guidance related to the accrediting standards into one comprehensive package.

Dr. Ward made a motion to accept the proposed revisions for first review and authorize 30 days of public comment. The motion was seconded by Mr. Moore and carried unanimously.

**First Review of Plan to Identify Provisions of the No Child Left Behind Act of 2001 that are not integral or Necessary to the Commonwealth of Virginia's Statewide Educational Program (HB 1427 and SB 410) and the Federal No Child Left Behind Act Waiver and Exemption Requests made by the Virginia Board of Education (HB 1428)**

Dr. Linda Wallinger, assistant superintendent for instruction, presented this item. Dr. Wallinger said that House Bill (HB) 1427 and Senate Bill (SB) 410 directed the Board to develop a plan to identify provisions of the *No Child Left Behind Act of 2001* (NCLB) that are not integral or necessary to the Commonwealth of Virginia's statewide educational program. The bills also requested that the Virginia Attorney General's office provide information related to the cost of noncompliance of certain provisions of NCLB.

House Bill (HB) 1428 encouraged the Virginia Board of Education to request certain waivers and exemptions to the requirements of NCLB. In March 2006 the Board approved and submitted the waiver requests to the United States Department of Education (USED).

Through a focused statewide educational reform effort, Virginia has had a rigorous set of content standards in the Standards of Learning (SOL) program and accompanying assessment system for over ten years. As a result, Virginia supports the primary goal and basic tenets of NCLB since they are in direct alignment with the system of standards and accountability already established in the state. The challenges Virginia faces in meeting the requirements of NCLB relate to the policies and procedures required by USED in implementation of the components of the law. Virginia believes that certain policies and procedures have resulted in unintended consequences and are not representative of sound educational practice. These unintended consequences have served as the foundation for Virginia's requests for flexibility to USED on an annual basis since 2003.

Since the passage of NCLB, Virginia has been blending the requirements of NCLB with its accountability system. This alignment has created confusion among state and local administrators as well as the public. Schools that meet one accountability rating may not meet the other, leading to misperceptions about the quality of educational programs in Virginia's schools.

The overall challenges Virginia has faced in implementation of the legislation described in the report are summarized below.

- The testing policies and assessment instruments required for use with students with disabilities (SWD) and limited English proficient (LEP) students.
- The criteria for determining highly qualified teachers (HQT) and interpretation of the highly qualified criteria in the law.

- The criteria to identify schools and divisions for school improvement and the accompanying sanctions.
- The administrative burden that has been placed on the state and local school divisions in reporting the data requirements as specified under the law.

Dr. Ward made a motion to waive first review and adopt the report to the Governor and General Assembly on the *Plan to Identify Provisions of the No Child Left Behind Act of 2001 that are not Integral or Necessary to the Commonwealth of Virginia's Statewide Educational Program in Response to HB 1427 and SB 410 and the Federal No Child Left Behind Act Waiver and Exemption Requests made by the Virginia Board of Education in Response to HB 1428*. Mrs. Saslaw seconded the motion. The motion passed with a vote of eight to one. Mr. Rotherham voted no. (The full text of Mr. Rotherham's statement is contained in the appendix.)

**First Review of Proposed Amendments to Virginia's No Child Left Behind Accountability Workbook Affecting Calculations of Adequate Yearly Progress (AYP) for the 2007-2008 School Year Based on Assessments Administered in 2006-2007**

Mrs. Shelley Loving-Ryder, assistant superintendent for assessment, presented this item. Mrs. Loving-Ryder said that the status of Virginia's Consolidated State Application Accountability Plan for the *No Child Left Behind Act of 2001* (NCLB), which is a reauthorization of the Elementary and Secondary Education Act (ESEA), requires all state educational agencies (SEA) to submit for approval to the United States Department of Education (USED) individual program applications or a consolidated state application. In May 2002 the Virginia Board of Education submitted and received USED approval for its initial Consolidated State Application under the NCLB law. The NCLB application process involves multiple submissions of information, data, and policies. A major component of the consolidated application is Virginia's Consolidated State Application Accountability Workbook that describes a single statewide accountability system for the Commonwealth. The policies and procedures that were used to determine Adequate Yearly Progress (AYP) ratings for the 2006-2007 school year based on 2005-2006 assessment results are described in the amended workbook dated July 21, 2006.

As part of the NCLB compliance requirements, states must submit materials to the USED for a peer review of the processes and policies related to the development and implementation of the state's standards and assessments. In November 2005, the Virginia Department of Education submitted available documentation to USED for review under this requirement. Because Virginia implemented new tests in reading and mathematics in grades 3 through 8 in spring 2006, as well as a revised alternate assessment program for students with significant cognitive disabilities, some of the required information was not available at the time of the November 2005 submission.

On March 22, 2006, USED issued a letter to Virginia outlining additional evidence to be submitted after the spring 2006 test administration. On June 13, 2006, Virginia submitted a timeline for providing the additional evidence. On June 28, 2006,

USED issued a second letter rating Virginia's assessment system as *Approval Pending*. The letter stated that "Virginia's system has one fundamental component that warrants the designation of *Approval Pending*. Specifically, we cannot approve Virginia's standards and assessment system due to outstanding concerns regarding the validity, comparability, alignment, reporting and approved academic achievement standards for the Stanford English Language Proficiency (SELP) assessment when used as a proxy for the reading Standards of Learning (SOL) assessments."

Based on the *Approval Pending* rating Virginia was placed under mandatory oversight by USED and was required to provide, within 25 business days from the receipt of the letter, a plan and a detailed timeline for how it will meet the remaining requirements to come into full compliance by the end of the 2006-2007 school year. A second peer review of the additional information will be conducted once all additional evidence has been submitted.

On August 31, 2006, the Virginia Department of Education received a letter from USED approving Virginia's timeline.

Amendments to Virginia's Accountability Workbook that address the following issues were presented:

- elimination of the SELP test as the state-approved assessment instrument to be used as a proxy for the SOL reading tests in grades 3 through 8 for LEP students at level 1 or 2 of English language proficiency;
- removal of scores resulting from certain substitute tests from the calculation of AYP;
- removal of scores resulting from Virginia Substitute Evaluation Program (VSEP) from the calculation of AYP; and
- expansion of the Virginia Grade Level Alternative (VGLA) to include LEP students at levels 1 and 2 of English language proficiency.

The proposed amendments would affect the calculation of AYP for the 2007-2008 school year based on assessments administered in 2006-2007.

Mrs. Castro made a motion to accept for first review the proposed amendments to Virginia's NCLB Accountability Workbook for assessments during the 2006-2007 school year. The motion was seconded by Mr. Rotherham and carried unanimously.

***Final Review of Proposed Response to No Child Left Behind (NCLB) Compliance Monitoring Report on Highly Qualified Teachers***

Dr. Thomas Elliott, assistant superintendent, teacher education and professional licensure, presented this item. Dr. Elliott said that the *No Child Left Behind Act of 2001* requires that states and school divisions ensure that all teachers of the core academic subjects be "highly qualified" by the end of the 2005-2006 school year.

Dr. Elliott said that the law requires that to be designated as highly qualified new teachers must hold a bachelor's degree, have full state licensure (including alternative licensure), and demonstrate subject-matter competence in the core academic subjects taught. Experienced teachers must meet requirements by the end of the 2005-2006 school year to be designated as highly qualified by meeting one of the following options:

- (1) Passing a rigorous state academic subject matter test; or
- (2) Completing an academic major, graduate degree, coursework equivalent to an academic major, or advanced certification or credentialing for middle or secondary school teachers; or
- (3) Using the High Objective Uniform State Standard of Evaluation (HOUSSE). The HOUSSE provides states with a method by which teachers can demonstrate competency in each subject they teach. [Virginia's HOUSSE was approved on February 25, 2004, and amended to address special educators on April 20, 2005.]

The United States Department of Education (USED) announced that if states meet the law's requirements and USED's expectations in making satisfactory efforts but fall short of having highly qualified teachers in every classroom by the end of the 2005-06 school year, states would have the opportunity to submit a revised plan for meeting the highly qualified teacher goal established in statute and regulations by the end of the 2006-07 school year.

In a letter of June 29, 2006, USED Assistant Secretary of Education Henry Johnson reported to the Virginia Department of Education the results of the USED Academic Improvement and Teacher Quality Programs team review of the state's progress in meeting the highly qualified teacher provisions of the *No Child Left Behind Act of 2001* (NCLB) and Virginia's administration of the Title II, Part A, Improving Teacher Quality State Grants program.

In the report, USED cited Virginia relative to the assessment of content knowledge of newly hired high school special education teachers. Virginia allowed an option for new high school special education teachers to take either a middle school Praxis II assessment in the content areas of mathematics, science, English, and/or social studies or an appropriate Praxis II content test (secondary level) to demonstrate content knowledge to be designated highly qualified. USED stated that using the Praxis II middle school assessments does not meet the requirements of NCLB or the Individuals with Disabilities Education Improvement Act of 2004 (IDEA).

USED also reported that Virginia's High Objective Uniform State Standard of Evaluation (HOUSSE) option of allowing licensed elementary, middle, and secondary teachers not new to the profession to become highly qualified by the completion of an earned advanced degree in any area from an accredited college or university does not meet the requirements of NCLB.

In the June 29, 2006, letter USED advised the Virginia Department of Education that the issues cited with respect to highly qualified special education teachers must be resolved by December 29, 2006, and the approved definition reflected in the 2005-2006 data reported on highly qualified teachers.

Virginia is required to submit a revised plan in response to the issues addressed in the compliance monitoring letter. To address the testing concern for high school special education teachers new to the profession, one of the following options is proposed to demonstrate subject-matter competency in the subject(s) they teach:

- Options provided by the *No Child Left Behind Act*, including an academic major in the content area, graduate degree in the teaching content area, or coursework equivalent to an undergraduate major. [New secondary special education teachers who teach two or more academic subjects who are highly qualified in mathematics, language arts, science, or social studies have two years after the date of employment to be highly qualified in the other core academic subject area, which may include HOUSSE. If teaching core academic subjects exclusively to children assessed on alternate achievement standards, the teacher must meet highly qualified requirements for an elementary teacher.]
- Rigorous State Academic Subject Test: Pass the appropriate Praxis II assessment(s) in the high school subject(s) they teach.

Praxis II Tests

Biology: Content Knowledge (0235)

Chemistry: Content Knowledge (0245)

Earth Science: Content Knowledge (0571)

English Language, Literature, and Composition: Content Knowledge (0041)

Mathematics: Content Knowledge (0061)

Physics: Content Knowledge (0265)

Social Studies: Content Knowledge (0081)

- Rigorous State Academic Subject Test: Pass the appropriate Middle School Praxis II assessment(s) in the subject(s) they teach if the special education teacher new to the profession is teaching classes at a high school campus in which the students are not earning standard credit in core academic areas towards a high school diploma.

The criteria for highly qualified teachers do not apply to special education consultative teachers who are collaborating with a core academic teacher.

To address the citation regarding the option of allowing licensed elementary, middle, and secondary teachers not new to the profession to become highly qualified by

the completion of an earned advanced degree from an accredited college or university, the following revision is recommended for Virginia's HOUSSE:

Amend the HOUSSE option "a" as follows:

3.a. completion of an earned advanced degree from an accredited college or university in the subject(s) the teacher is teaching.

Dr. Elliott reported that the Department of Education surveyed the 132 school divisions to collect information on the impact to the approximate 99,000 Virginia teachers if the proposed amendments are approved. The Department of Education received responses from all school divisions, and the results of the survey were as follows:

73 Number of teachers of special education who have been designated highly qualified who (1) serve as the teacher of record for high school classes in which the students are receiving a standard diploma and (2) took the Praxis II Middle School Subject Content Assessment(s) to be designated as highly qualified.

82 Number of experienced teachers who were designated highly qualified by completing an advanced degree (not in the subject content area) and who do not meet one of the other HOUSSE criteria.

Mrs. Saslaw made a motion to adopt the following language. The motion was seconded by Dr. Jones and carried unanimously.

- (1) The proposed amendment to the criteria below for high school special education teachers new to the profession to demonstrate subject-matter competency in the subject(s) they teach for the designation of highly qualified:
  - Complete an option provided by the *No Child Left Behind Act*, including an academic major in the content area, graduate degree in the teaching content area, or coursework equivalent to an undergraduate major, or
  - Pass the appropriate Praxis II assessment(s) in the high school subject(s) they, teach; or
  - Pass the appropriate middle school Praxis II assessment(s) in the subject(s) they teach if the special education teacher new to the profession is teaching classes at a high school campus in which the students are not earning standard credit in core academic areas towards a high school diploma.
- (2) The proposed amendment to the HOUSSE option of allowing licensed elementary, middle, and secondary teachers not new to the profession to become

highly qualified by the completion of an earned advanced degree from an accredited college or university in the subjects(s) the teacher is teaching.

**Final Review of Nominations to Fill Vacancies on Board of Education Advisory Committees: Advisory Committee on Adult Education and Literacy, State Special Education Advisory Committee, Virginia Advisory Committee for Career and Technical Education, Virginia Advisory Committee for the Education of the Gifted and the Advisory Board for Teacher Education and Licensure**

Dr. Margaret Roberts, executive assistant to the Board of Education, presented this item. Dr. Roberts said that advisory committees may be created by the Board for special purposes to include, but not be limited to, federal and state-mandated committees. An advisory committee shall be composed of persons who represent the views and interests of the general public and who are known to be qualified to perform their duties. Personnel of the Department of Education may be appointed to the committee as members or as consultants. All appointments to an advisory committee shall be made by the Board upon the recommendations of the Superintendent of Public Instruction.

The Board of Education has six advisory committees, five of which have vacancies for the three-year term of July 2006 to June 2009. (The nomination process for the Student Advisory Committee is handled through a special procedure that will be conducted in the early fall. Therefore, nominations to the Student Advisory Committee are not being accepted at this time.)

Following the close of the nomination period, nominations were reviewed by Department staff. As specified in the Board's bylaws, nominees are recommended for appointment by the Superintendent of Public Instruction. Every attempt was made to balance the membership by geographic region as well as gender and ethnicity.

Mr. Moore made a motion to adopt the list of nominees recommended for appointment to Board of Education advisory committees. The motion was seconded by Dr. Ward and carried unanimously.

The nominees recommended for appointment to the 2006-2009 term are as follows:

**Advisory Board for Teacher Education and Licensure**

- Classroom Teacher-Elementary Reading:  
Dawn Rees-Blakeman, Title I Reading Specialist, Roanoke City Public Schools
- Division Superintendent:  
Dr. Gwen E. Edwards, Nottoway County Public Schools
- School Board Member:  
Ann Y. Williams, Hopewell City Public Schools
- Classroom Teacher (Middle):

Susan K. Shoap, Swift Creek Middle School, Chesterfield County Public Schools

- Higher Education (Private Institution):  
Dr. Carol C. Grove, Master of Arts in Teaching Program, Mary Baldwin College

Members reappointed:

- Business Community:  
Rene Massey Ashjian, Sales*Boost*, Glen Allen, VA
- Classroom Teacher-Secondary:  
Cynthia D. Baird, Brentsville High School, Prince William County Public Schools
- Higher Education (Public Institution):  
Dr. William H. Graves, III, Dean, Darden College of Education, Old Dominion University

#### State Special Education Advisory Committee

- Classroom teacher (special education):  
Melodie M. Henderson, ED/LD teacher, Richmond City Public Schools
- Parent of a child with a disability, Region 1:  
Carletta Pittman Wilson, Parent of a child with a disability, Region 1
- Parent of a child with a disability, Region 8  
Carol Hamilton, Parent of a child with a disability, Region 8
- Person with a disability:  
Trevor Scott Green, Christiansburg

Members reappointed:

- Anne Fisher, Parent of a child with a disability, Region 2
- Carmen Sanchez, Parent of a child with a disability, Region 4

#### Advisory Committee on Adult Education and Literacy

- Dr. David L. Red, Adult ESOL Coordinator, Fairfax County Public Schools
- Barbara E. Gibson, Associate Director, The Literacy Institute of Virginia, VCU
- Dr. Cynthia Cooper, Director of Alternative and Adult Education, Hampton City Public Schools
- Jacqueline A. Venable, Director of Adult Education, Halifax County Public Schools
- Betty A. Mullins, Classroom Teacher, Tazewell County Public Schools
- Dr. Bonita M. Moore, Director, Office of Adult and Community Education, Fairfax County Public Schools

#### Career and Technical Education Advisory Committee

- John C. Barnes, Corporate Vice President, Potomac Supply Corporation, Heathsville, VA

- Tracee B. Carmean, MSM, RN, Vice President, Riverside Health Systems, Yorktown, VA

Virginia Advisory Committee for the Education of the Gifted

- Dr. Ellen Fithian, Independent Educational Consultant, Poquoson
- Dr. Judith Greathouse, Coordinator of Gifted Programs, Frederick County Public Schools
- Laura Hall, Smyth County School Board
- Tamra Oliver, Consulting Teacher, Montgomery County Public Schools
- Brian Pace, Director, Piedmont Governor's School
- Mary Downing Roberts-Gabay, School Counselor, Richmond City Public Schools
- Diane Sterbuzel, Resource Teacher, Manassas City Public Schools
- Margaret S. Turley, Middle School Coordinator for Gifted Education, Bedford County Public Schools
- Pamela Ward, Resource Teacher, Arlington County Public Schools
- Judy Williams, President, Virginia Association of the Gifted

**Annual Report: State Special Education Advisory Committee**

Mr. Douglas Cox, assistant superintendent, division of special education and student services, introduced Mrs. Anne Fischer, chair.

Mrs. Fischer said that the State Special Education Advisory Committee (SSEAC) is a federally-mandated panel comprised of individuals with disabilities, teachers, parents, state and local officials, and local administrators. The Individuals with Disabilities Education Act (IDEA) requires that the committee submit an annual report to the state education agency.

The report includes (1) an overview of the SSEAC organizational structure, (2) a description of meetings conducted during the 2004-05 year, (3) an overview of issues addressed by the committee during the year, and (4) a list of future issues that the SSEAC will consider.

Major issues addressed by the committee during the year included:

- Teacher licensure and qualifications, including recommendations to make modifications to the proposed teacher licensure requirements, develop programs to increase the number of qualified teachers, and develop and implement flexible and more targeted ways to achieve licensure in special education;
- Alternate and alternative Standards of Learning (SOL) assessments, including results of testing children through these assessments and the impact of access to the general curriculum on assessments;
- Promising and effective practice, training needs and postsecondary transition for students with autism;

- The process VDOE has developed to rewrite Virginia regulations in response to the Individuals with Disabilities Education Act (IDEA 2004) regulations, as well as the state performance plan and procedures to obtain input from constituencies related to state policies and procedures; and
- Consolidation proposals for Virginia's Schools for the Deaf and Blind.

The SSEAC anticipates continued work on these topics and new work on Response to Intervention; IDEA regulations and VDOE implementation of those regulations; Virginia Standards of Quality (SOQ) issues; staffing and service delivery issues; and postsecondary transition.

The SSEAC made a number of recommendations to VDOE, the State Board of Education (BOE) and to the Advisory Board of Teacher Education and Licensure (ABTEL). These recommendations are as follows:

- The SSEAC recommended that the BOE require local school divisions to provide a policy on restraint and seclusion at the division level and participate in the development of a policy guide for the school divisions.
- The SSEAC recommended to ABTEL that the license of teachers of students with disabilities in the general curriculum be divided into elementary (K-6) and middle/secondary and that coursework be included in each license to meet the "highly qualified" requirements, including a proposal to use the Fundamental Subjects Praxis II tests to meet requirements. In addition, the committee endorsed the concept of an add-on special education endorsement for teachers already licensed as elementary teachers or content teachers, provided that it is at either the elementary or the middle/secondary level.
- The committee requested that the VDOE communicate with the State Council of Higher Education for Virginia the need to maintain, develop and implement undergraduate special education licensure programs as part of baccalaureate degree programs in Virginia.
- The committee recommended that VDOE develop and implement statewide administrator training and technical assistance support to prepare, retain, and develop knowledge and leadership skills for 1) special education administrators and administrators in supervisory positions in school divisions as well as for 2) building level administrators.

The Board accepted the report, and it will be disseminated to the public upon request.

### ***DISCUSSION OF CURRENT ISSUES***

Mrs. Castro announced that Hispanic American Heritage Month is celebrated September 15-October 15 to celebrate contributions made by Latinos in shaping America.

The Board recognized the Virginia Association of State Superintendents Association. Mr. Al Butler, chair, addressed the Board on their behalf. Superintendents

from Henrico County, Albemarle County, Loudoun County, and Wythe County also addressed the Board.

Dr. Cannaday spoke on the Accreditation Standards of 2006 which included the following subtopics: (1) higher standards to reach higher results, (2) higher expectations approve academic readiness, and (3) sustain the aspiration to commit to all schools.

Dr. Jones asked staff to report on how many students are enrolled in four-year colleges/universities by percentage of population. Dr. Emblidge requested this report be a presentation by the Board Committee chaired by Mr. Johnson.

Mr. Douglas Garcia, Assistant Secretary of Education, introduced visitors from Nigeria which included the chairperson and five members of the government board. Mr. Garcia said that the visitors from Nigeria also visited officials in Washington, D. C.

### ***EXECUTIVE SESSION***

Dr. Ward made a motion to go into executive session under Virginia Code 2.2-3711.A, specifically to discuss personnel matters related to licensure. Dr. Jones seconded the motion and it carried unanimously. The Board adjourned for the Executive Session at 12:05 a.m.

Dr. Ward made a motion that the Board reconvene in open session. The motion was seconded by Dr. Jones and carried unanimously. The Board reconvened at 12:16 p.m.

Dr. Ward made a motion that the Board certify by roll-call vote that to the best of each member's knowledge, (1) only public business matters lawfully exempted from open meeting requirements by Virginia law were discussed in the executive session to which this certification motion applies, and (2) only such public business matters as were identified in the motion convening the executive session were heard, discussed or considered by the Board. The motion was seconded by Dr. Jones and carried unanimously.

#### **Board Roll call:**

Thomas Brewster - Yes  
Andrew Rotherham - Yes  
Ella Ward - Yes  
Gary Jones - Yes  
Isis Castro - Yes  
Eleanor Saslaw - Yes  
David Johnson - Yes  
Kelvin Moore - Yes  
Mark Emblidge - Yes

Mrs. Saslaw made the following motions:

Case #1: To rescind the action of the July 26, 2006 meeting for Ms. Gladys Cross. Dr. Ward seconded the motion and it carried unanimously.

Case #2: To reinstate the license of Ms. Gladys Cross. Dr. Ward seconded the motion and it carried unanimously.

***ADJOURNMENT***

There being no further business of the Board of Education and the Board of Career and Technical Education, Dr. Emblidge adjourned the meeting at 12:30 p.m.

***PUBLIC HEARING ON PROPOSED REVISIONS TO THE REGULATIONS FOR CONDUCTING DIVISION-LEVEL ACADEMIC REVIEWS***

***PUBLIC HEARING ON REGULATIONS GOVERNING THE PROCESS FOR SUBMITTING PROPOSALS TO CONSOLIDATE SCHOOL DIVISIONS***

There were no speakers registered to speak at the public hearings. The public hearings were adjourned at 12:45 p.m.

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Secretary

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President

APPENDIX  
Board of Education  
September 27, 2006

**Plan to Identify Provisions of the No Child Left Behind Act of 2001 that are not integral or Necessary to the Commonwealth of Virginia's Statewide Educational Program (HB 1427 and SB 410) and the Federal No Child Left Behind Act Waiver and Exemption Requests made by the Virginia Board of Education (HB 1428)**

Mr. Andrew J. Rotherham provided the text of his remarks on the above-referenced item. The full text of Mr. Rotherham's statement is as follows:

"I have several problems with this report. Overall, at a time when the state has double-digit achievement gaps along racial and ethnic lines I do not think that debating compliance with a law aimed at focusing our attention on our struggling students is a good use of our time or resources.

"We have much to be proud of with our public schools but there is still a great deal of work to be done to give all students in this commonwealth the education they need and deserve. We are entering a time of hyper-competitiveness among states and nations and the challenge laid down by No Child Left Behind is one that Virginia simply cannot afford to duck.

"Yes, No Child has some problems that federal policymakers should address and yes, officials at the U.S. Department of Education have not treated some of Virginia's concerns with the respect I believe they deserve. However, none of that changes the underlying issues.

"Virginia receives more than \$300 million in federal assistance under the Elementary and Secondary Education Act (No Child Left Behind-NCLB). We cannot afford to put this funding in jeopardy, and consequently this entire process is a time and resource consuming academic exercise. We have already identified (even using a problematic methodology that likely overstates costs) that funding shortfalls under NCLB are less than one percent of our average per pupil spending in Virginia. Very much related, this federal aid is conditional aid, and the question of whether states must comply with its provisions in order to accept it is settled law. And, many of the provisions in question are not especially onerous anyway. In fact it is ironic that as we lament the lack of data around some key questions, for instance our graduation rates, we simultaneously protest provisions requiring us to collect administrative data.

“More specifically, some of the language in this report misstates the issues. For instance, confusion about differences between federal AYP requirements and our accreditation in Virginia is not the fault of the federal law but rather a failure on our part to communicate effectively with parents and other stakeholders. Likewise, "sanctions" is a loaded term in this context.

“Provisions offering parents tutoring or public school choice are not sanctions from their point of view but rather remedies. All this is not to say that there are not some legitimate issues here, but this process is an unproductive way to address them and distracts us from more immediate challenges.”