

**Virginia Board of Education
Virginia Assessment Program
Protocol for State-Directed Investigations of Testing Irregularities
April 24, 2007**

PURPOSE

The purpose of this document is to describe those circumstances under which the Virginia Department of Education (VDOE) may, on behalf of the Virginia Board of Education, conduct an investigation of an alleged breach in test security, unauthorized alteration of test materials, or improper administration of tests by local school division employees. This document describes the process of the state-directed investigation, how investigative findings are communicated, and how corrective actions and/or sanctions are implemented and monitored. The document is divided into eight sections:

- Statutory And Regulatory Authority
- Definition Of A Testing Irregularity
- Reporting A Testing Irregularity
- Determining Whether An Investigation By The Virginia Department Of Education Is Warranted
- Process Of The Investigation
- Reporting The Findings
- Implementing And Monitoring The Corrective Actions/Sanctions

STATUTORY/REGULATORY AUTHORITY

Authority for the Investigation of Testing Irregularities

The Code of Virginia at § 22.1-253.13:3, Standard 3 D pertains to the review or investigation of any alleged breach in test security, unauthorized alteration of test materials or improper administration of tests by local school board employees responsible for the distribution or administration of the tests. It states, in part:

The Board of Education may pursue all available civil remedies pursuant to § 22.1-19.1 or administrative action pursuant to § 22.1-292.1 for breaches in test security and unauthorized alteration of test materials or test results.

The Board may initiate or cause to be initiated a review or investigation of any alleged breach in security, unauthorized alteration, or improper administration of tests by local school board

employees responsible for the distribution or administration of the tests.

Records and any other information furnished to or prepared by the Board during the conduct of a review or investigation may be withheld pursuant to subdivision 12 of § 2.2-3705.3. However, this section shall not prohibit the disclosure of records to (i) a local school board or division superintendent for the purpose of permitting such board or superintendent to consider or to take personnel action with regard to an employee or (ii) any requester, after the conclusion of a review or investigation, in a form that (a) does not reveal the identity of any person making a complaint or supplying information to the Board on a confidential basis and (b) does not compromise the security of any test mandated by the Board. Any local school board or division superintendent receiving such records or other information shall, upon taking personnel action against a relevant employee, place copies of such records or information relating to the specific employee in such person's personnel file.

Potential Actions for Violations of Test Security Procedures

The Code of Virginia at § 22.1-19.1 states the actions for the violation of test security procedures. It states, in part, the following:

A. The Office of the Attorney General, on behalf of the Board of Education, may bring a cause of action in the circuit court having jurisdiction where the person resides or where the act occurred for injunctive relief, civil penalty, or both, against any person who knowingly and willfully commits any of the following acts related to secure mandatory tests required by the Board to be administered to students:

1. Permitting unauthorized access to secure test questions prior to testing;
2. Copying or reproducing all or any portion of any secure test booklet;
3. Divulging the contents of any portion of a secure test;
4. Altering test materials or examinees' responses in any way;
5. Creating or making available answer keys to secure tests;

6. Making a false certification on the test security form established by the Department of Education; or

7. Participating in, directing, aiding or abetting, or assisting in any of the acts prohibited in this section.

For the purpose of this subsection, "secure" means an item, question, or test that has not been made publicly available by the Department of Education.

B. Nothing in this section may be construed to prohibit or restrict the reasonable and necessary actions of the Board of Education, Superintendent of Public Instruction or the Department of Education or their agents or employees engaged in test development or selection, test form construction, standard setting, test scoring, reporting test scores, or any other related activities which, in the judgment of the Superintendent of Public Instruction or Board of Education, are necessary and appropriate.

C. Any person who violates any provisions of this section may be assessed a civil penalty not to exceed \$1,000 for each violation. Furthermore, any person whose administrative or teaching license has been suspended or revoked pursuant to § 22.1-292.1 may be assessed a civil penalty for the same violation under this section and the reasonable costs of any review or investigation of a violation of test security.

All civil penalties paid to the Commonwealth pursuant to this section shall be deposited into the Literary Fund.

The Code of Virginia at §22.1-292.1 gives permission for the Board of Education to suspend or revoke the administrative or teaching license of any individual who knowingly and willfully compromises secure mandatory tests. It states the following:

A. The Board of Education may suspend or revoke the administrative or teaching license it has issued to any person who commits any of the following acts knowingly and willfully with the intent to compromise secure mandatory tests administered to students as required by this title or by the Board of Education:

1. Giving unauthorized access to secure test questions;
2. Copying or reproducing all or any portion of any secure test booklet;

3. Divulging the contents of any portion of a secure test;
4. Coaching or assisting examinees during testing or altering test materials or examinees' responses in any way;
5. Making available any answer keys;
6. Failing to follow test security procedures established by the Department of Education;
7. Providing a false certification on any test security form required by the Department of Education;
8. Retaining a copy of secure test questions; and
9. Participating in, directing, aiding, assisting in, or encouraging any of the acts prohibited by this section.

For the purposes of this section, "secure test" means an item, question, or test that has not been made publicly available by the Department of Education.

Nothing in this section shall be construed to prohibit educational personnel from providing input to administrators or other authorized personnel, including school board members and members of the General Assembly, except when done in a manner that violates test integrity or security regarding the accuracy, clarity, or propriety of test items or test administration procedures.

B. Nothing in this section shall be construed to prohibit or restrict the reasonable and necessary actions of the Board of Education, the Superintendent of Public Instruction, or the Department of Education in test development or selection, test form construction, standard setting, test scoring and reporting, or any other related activities which, in the judgment of the Superintendent of Public Instruction or the Board of Education, are necessary and appropriate.

C. Any suspension or revocation imposed for the acts enumerated in this section shall be rendered pursuant to Board regulations promulgated pursuant to the Administrative Process Act (§ 2.2-4000 et seq.) and § 22.1-298.1, governing the licensure of teachers.

Authority to Withhold or Deny Accreditation Ratings

Section 8 VAC 20-131-340 of the Regulations Establishing Standards for Accrediting Public Schools in Virginia (SOA) gives the Virginia Board of Education the authority to withhold or deny a school's accreditation rating if a school is found to be in violation of test security procedures. It states the following:

8 VAC 20-131-340. Special provisions and sanctions.

A. Any school in violation of these regulations shall be subject to appropriate action by the Board of Education including, but not limited to, the withholding or denial of a school's accreditation.

B. A school's accreditation rating may be withheld by action of the Board of Education for any school found to be in violation of test security procedures pursuant to § 22.1-19.1 of the Code of Virginia. Withholding of a school's accreditation rating shall not be considered an interruption of the three-consecutive-year period for purposes of receiving an Accreditation Denied status pursuant to 8 VAC 20-131-300.

C. The Board of Education may exercise its authority to seek school division compliance with school laws pursuant to relevant provisions of the Code of Virginia when any school within a division is rated Accreditation Denied.

Authority to Withhold Test Investigation Information

Section 2.2-3705.3 of the Virginia Freedom of Information Act states:

The following records are excluded from the provisions of this chapter but may be disclosed by the custodian in his discretion, except where such disclosure is prohibited by law:

12. Records furnished to or prepared by the Board of Education pursuant to subsection D of § 22.1-253.13:3 in connection with the review or investigation of any alleged breach in security, unauthorized alteration, or improper administration of tests by local school board employees responsible for the distribution or administration of the tests. However, this section shall not prohibit the disclosure of records to (i) a local school board or division superintendent for the purpose of permitting such board or superintendent to consider or to take personnel action with regard

to an employee or (ii) any requester, after the conclusion of a review or investigation, in a form that (a) does not reveal the identity of any person making a complaint or supplying information to the Board on a confidential basis and (b) does not compromise the security of any test mandated by the Board.

DEFINITION OF A TESTING IRREGULARITY

A testing irregularity is defined as any occurrence that may inappropriately influence a student's performance on a test or the reporting of a student's performance, or any occurrence that constitutes a breach in test security or improper administration of mandatory student testing.

REPORTING A TESTING IRREGULARITY

Test Examiners are directed to report any testing irregularity to the designated School Test Coordinator (STC) immediately, and STCs are directed to report testing irregularities to the Division Director of Testing (DDOT) within 24 hours of their occurrence. While some irregularities may be resolved locally by the DDOT, most irregularities are forwarded by the DDOT within 24 hours to the VDOE for review and guidance.

DDOTs are required to report certain irregularities to the VDOE. All situations that involve the retesting of students, compromised testing procedures or policies, or student test record exclusions must be reported to the VDOE. In some cases testing irregularities are reported to the VDOE by concerned individuals, some of whom wish to remain anonymous, through means other than through the normal reporting structure.

DETERMINING WHETHER AN INVESTIGATION BY THE VIRGINIA DEPARTMENT OF EDUCATION IS WARRANTED

Most testing irregularities are investigated by the DDOT under the guidance of the Virginia Department of Education's Office of Test Administration, Scoring and Reporting. If the reported irregularity is egregious or suggests that staff from the school division's central office are involved, then an investigation by the Virginia Department of Education on behalf of the Virginia Board of Education may be warranted.

A determination of whether to conduct a state-directed investigation is made collaboratively by the Superintendent of Public Instruction, the Chief Deputy Superintendent and the Assistant Superintendent for Student Assessment and School Improvement.

PROCESS OF THE INVESTIGATION

Once it is determined that the scope of the violation warrants an investigation, the local school division is informed and the VDOE convenes a Review Team to conduct the investigation. The Review Team conducts the investigation in an expeditious manner but takes the necessary time to collect thorough and detailed information. Throughout the scope of the investigation, the Review Team Coordinator updates the Superintendent of Public Instruction, the Chief Deputy Superintendent and the Assistant Superintendent for Student Assessment and School Improvement on the progress of the investigation.

REPORTING THE FINDINGS

Once the investigation is complete, the Review Team Coordinator summarizes the findings and provides a written report to the Superintendent of Public Instruction, the Chief Deputy Superintendent and the Assistant Superintendent for Student Assessment and School Improvement.

The written report documents the investigation, the laws or regulations that guided the investigation, a summary of the methodology of the review process, and the findings and conclusions of the investigation. As necessary, the written report may include a corrective action plan and a timeline for implementation. The corrective action plan addresses the weaknesses of the testing program in the school or division and provides a mandatory framework of actions needed for improvement.

The written report is shared with the local school division. If applicable, the Superintendent of Public Instruction informs the Division of Teacher Education and Licensure and the Office of the Attorney General so that appropriate actions may be taken in accordance with the Code of Virginia and Board regulations.

IMPLEMENTING AND MONITORING THE CORRECTIVE ACTIONS/SANCTIONS

If the findings and conclusions of the investigation indicate that a corrective action plan is necessary, it will be part of the final written report. The corrective action plan is specific to the identified weaknesses and outlines actions to be completed by the school or division.

As per Section 8 VAC 20-131-340 of the *Regulations Establishing Standards for Accrediting Public Schools in Virginia*, accreditation ratings may be withheld for any school that violates § 22.1-19.1 of the Code of Virginia. Depending upon the situation, accreditation ratings may be determined after corrective actions are implemented.

Adequate Yearly Progress ratings for a school or division may also be withheld or denied until specified corrective actions are implemented. Schools or divisions will be placed in a To Be Determined (TBD) status until the VDOE is certain that all reporting data is accurately reflected in the AYP reports.