

Opinions from the Office of the Virginia Attorney General

Revised November 1, 2011

Section [2.2-505](#) of the *Code of Virginia* authorizes the Attorney General (AG) of Virginia to “give his advice and render official advisory opinions in writing only when requested in writing so to do by one of the following: the Governor; a member of the General Assembly; a judge of a court of record or a judge of a court not of record; the State Corporation Commission; an attorney for the Commonwealth; a county, city, or town attorney in those localities in which such office has been created; a clerk of a court of record; a city or county sheriff; a city or county treasurer or similar officer; a commissioner of the revenue or similar officer; a chairman or secretary of an electoral board; or the head of a state department, division, bureau, institution or board.”

You will find links for Opinions, by the year, on the Web site for the AG at: <http://www.oag.state.va.us/OPINIONS/index.html>. A search link is also on that Web page. In addition, the Virginia Department of Education has posted Opinions relevant to public education below. Click on the Opinion number to view the entire Opinion. In cases, where the Opinion does not have an assigned number, click on [Link](#).

This information is provided as a resource. The department cannot provide legal advice. Please contact your school board attorney or your personal attorney if you have any legal questions.

Note that an Opinion, issued December 18, 1987, has been added to those listed below due to public interest in the topic, the issuance of guardianship orders for purpose of public school enrollment. We have no other Opinions posted between December 18, 1987 and April 1996.

Issued	Opinion Number	Summary
2011		
September 2011	11-099	A town councilman may serve on the county school board, provided all other eligibility requirements are met.
August 2011	11-096	The discussion of the business of the electoral board by two members of the Board constitutes a meeting of the board under the Freedom of Information (Act) that must be conducted in public and properly noticed as required by the Act. The transaction of public business includes conversations over the telephone involving “rescheduling board meetings, submitting agenda items, commenting on unapproved draft minutes of prior meetings” and other similar matters. Such matters, however, may be discussed via electronic mail. Electronic mail lacks the simultaneous feature of telephone meetings and, therefore, does not constitute a “meeting” under the Act.
July 2011	11-071	Under the plain language of § 22.1-30(A) of the Code of Virginia, a planning commission member is not precluded from being elected to, and serving on, a school board.

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May 2011	11-039	The exception found in § 2.2-3119(E) applies to Franklin County, because it is a member of Planning District 12. Section 2.2-3119(E) can be harmonized with other statutes that require the school board to retain ultimate authority for hiring decisions. Section 2.2-3119(E) does not require the school board to forfeit that authority; rather, it requires the superintendent independently to reach a determination about the qualifications of an applicant who is married to or related to a school board member and to do so without any involvement of the school board in that hiring decision. Upon receiving the superintendent's recommendation, the non-conflicted school board members then can vote on the applicant. The requirements of § 2.2-3119(E) are satisfied when a school board member recuses himself and certifies on the record that he had no involvement in the decision to hire his spouse or relative. Although the Code authorizes a Commonwealth's Attorney or citizens to file suits for violations of the Conflicts Act, such a suit would be unsuccessful when the strictures of § 2.2-3119(E) are followed because no violations of the Act would have occurred. Finally, this Office is unable to conclude that § 2.2-3119(E) is unconstitutional, given the presumption of constitutionality of statutes and the highly deferential standard of review that would be applied to judicial scrutiny of this statute.
March 2011	11-015	Should two existing school divisions be consolidated, the Composite Index to be applied to the consolidated school division is the lower of the Composite Indices established for the two governmental entities, and the state funding for the consolidated school divisions should not be less than that achieved by this means for a period of five years.
February 2011	11-003	The authority to establish payroll dates for school division employees rests with the school board, but the <i>Code of Virginia</i> contemplates the establishment of regular payroll periods and the mechanics of making the payments to schools rests with the treasurer of the locality. In addition, § 22.1-116 of the <i>Code</i> is satisfied if the treasurer maintains separate internal accounts of the funds of the City and of the school division for accounting purposes; the treasurer is not required to maintain a separate bank account for school board funds.
January 2011	10-121	A local school board cannot impose a mandatory fee for the taking of the Advanced Placement (AP) Examination on students taking AP courses when the AP Examination is the required end-of-course examination.
January 2011	10-122	A school board can consolidate certain functions with a city or a county, but in doing so the school board may not abrogate its duties or compromise its independence with respect to its core responsibilities. Outsourcing certain functions is permissible so long as school boards and localities comply with statutory and constitutional restrictions.
2010		
December 2010	10-118	A school board is solely responsible for the decision as to whether and how to consolidate schools, and a county board of supervisors may not instruct the school board to consolidate

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		schools or how to consolidate schools.
November 2010	10-105	Searches and seizures of students' cellular phones and laptops are permitted when there is a reasonable suspicion that the student is violating the law or the rules of the school, and school officials should not share explicit materials depicting minors with other school personnel, but rather that the material should be brought to the attention of the appropriate law enforcement agents.
November 2010	10-096	A sheriff's office is permitted to assist a local school division with enforcing the compulsory attendance laws by serving notice of an upcoming meeting to the parents or custodians of a truant student, provided the local school board, division superintendent or the administration of a school has requested such assistance from the Sheriff.
November 2010	10-049	Based on the facts available to the Attorney General, the Board of Supervisors made an appropriation to the school board and, therefore, did not have the authority to reduce an appropriation previously made.
September 2010	10-085	Because a school board consists of those persons who are "duly appointed or elected," a vacancy reduces the number of persons who are duly appointed or elected and, therefore, reduces the number of persons necessary to establish a quorum.
September 2010	10-048 (Reissue)	An employee of the local school division may not serve on the school board for which she is an employee.
May 2010	10-034	The Attorney General cannot conclude that § 22.1-79.1 of the Code of Virginia, which directs school boards to set the starting date for students after Labor Day, is unconstitutional.
April 2010	10-014	The charter agreement provision between the City of Richmond School Board and Patrick Henry School of Science and Arts does not conflict with § 22.1-212.14(D) of the Code of Virginia. This office did not receive sufficient facts to determine whether a disparity in per student funding exists and, if so, whether it would constitute impermissible disincentive.
March 2010	10-016	A local school board may not charge a fee for transportation of students enrolled in a specialty program located outside the boundaries of the students' base school.
March 2010	10-010	The provision of the charter agreement between the City of Richmond School Board and Patrick Henry School of Science requiring Patrick Henry to make the building compliant with the Americans with Disabilities Act does not conflict with § 22.1-212.14(D) of the Code of Virginia.
February 2010	10-001	The Charter of the City of Newport News does not require that the Newport News School Board rely on the sole legal advice of the City attorney; the board may retain its own counsel.
2009		
July 2009	09-022	A local school board may select and use textbooks that are not approved by the Board of Education, provided it complies with the Board's regulations governing such selection. The local school board must give 'official approval' of the criteria to be used for review and assessment of textbooks at the local

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		level.
July 2009	08-111	Commonwealth's attorneys and assistant Commonwealth's attorneys may carry concealed handguns on school property.
March 2009	08-085	A school board, charged with the responsibility to operate and supervise the public schools, is the appropriate arbiter to resolve a dispute over transportation of pupils. The decision to permit two students to ride separate buses is not unreasonable or unlawful.
January 2009	08-114	Failure to give notice of meeting invalidates city council's appointment of a nominee to the school board.
January 2009	08-078	Failure to give notice of meeting invalidates city council's appointment of a nominee to the school board.
2008		
July 2008	08-034	When circumstances change, a school board may revisit any decision regarding consolidation of schools based on changed circumstances; unless amending or abandoning the consolidation contributes to the efficiency of the school division, it is not a proper factor in the school board's analysis. Whether a planned consolidation or an amendment or abandonment thereof contributes to school division efficiency is a factual determination.
March 2008	08-024	Article X, § 7-A of the Constitution mandates that the General Assembly establish a Lottery Proceeds Fund, deposit net lottery proceeds into the Fund, and appropriate amounts from the Fund directly to the counties, cities, and towns and the school divisions thereof to be expended for purposes of public education. Absent the affirmative vote of four-fifths of the members voting in each house, any budget/appropriation item diverting lottery funds would be unconstitutional.
March 2008	08-023	The Constitution mandates that the General Assembly establish a Lottery Proceeds Fund into which net lottery proceeds are deposited and appropriate amounts in that Fund directly to counties, cities, and towns and the school divisions thereof.
February 2008	08-005	A Dickenson County school bus driver is an employee of the school board and not an employee of the county; such school bus driver may serve on the Dickenson County Industrial Development Authority.
February 2008	07-095	A school board that employs janitors is pursuing a governmental function for purposes of immunity from tort liability.
2007		
August 2007	07-053	Local school boards may not charge for transportation of students to and from school.
June 2007	07-015	Juvenile and domestic relations district courts have original, exclusive jurisdiction to determine custody matters. A court may award custody to a non-parent when clear and convincing evidence shows that such determination is in the best interest of the child. Categories in § 22.1-3 regarding the determination of residence in a school district are not exclusive. A school district may not refuse to provide free education to a bona fide resident of the school based solely on

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		such categories.
January 2007	06-084	Compliance with employee certification regarding prior criminal convictions is applicable to school board contracts for services where a contractor or his employees reasonably could be expected to be in the presence of students during school hours or during school-sponsored activities; whether a particular contract is one for services that requires a contractor or his employees to be in the presence of students must be determined from the terms of contract. A school board must require certification information from subcontractors and their employees. Affected persons must certify that they have not been convicted of felonies or offenses involving sexual molestation, physical or sexual abuse, or rape of a child, and disclose convictions of crimes of moral turpitude. Whether certain crime involves moral turpitude depends on the facts and nature of the crime; crimes involving dishonesty do involve moral turpitude. Where a contractor or relevant employee fails to meet certification requirements, the contractor is not eligible for award of the contract. In the event of a materially false certification the school board has the authority to revoke the contract. Revocation of a required license is within the purview of the licensing agency.
January 2007	06-072	There is no authority for the York County School Board to prohibit the possession of firearms at school board meetings that are not held on school property.
2006		
December 2006	06-077	There is no direct obligation for a contractor to provide certification regarding prior criminal convictions for employees; the award of a contract is subject to employees providing such certification. A local school board must require certification prior to an award of a covered contract to meet the mandate of the statute. Direct contact with students is limited to the contractor and employees providing a certification. The contractor's employees added during the contract period must provide certifications prior to direct contact with students. The local school board should rely on the definition of 'services' in the Virginia Public Procurement Act in determining the scope of responsibilities under § 22.1-296.1(C). A natural or non-natural person is a 'contractor' within the meaning of § 22.1-296.1. Anyone having knowledge of a materially false certification may report that information to the local school board, local law enforcement authorities, or the appropriate Commonwealth's attorney for prosecution and may also report to the respective licensing agency. Whether certain crime involves moral turpitude depends on the facts and nature of the crime; crimes involving dishonesty do involve moral turpitude.
November 2006	06-068	There is no authority for a school board to accept a gift of construction services. A school board may accept a gift of services pursuant to the Virginia State Government Volunteers Act and may impose reasonable conditions upon a donation to make a gift acceptable to the board. The Virginia Public Procurement Act does not apply to donation of services.

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February 2006	05-093	There is no conflict between § 18.2-119 and §§ 24.2-307, 24.2-310(B), and 24.2-310.1; an individual prohibited from entering school property may enter that portion of the school property designated as a polling place solely for the purpose of casting his vote.
2005		
July 2005	05-044	Fairfax County Public Schools instruction prohibiting principals and other staff members from speaking at private baccalaureate events as private citizens violates First Amendment rights of free speech.
April 2005	04-094	A local government does not have the authority to enact ordinances imposing a civil or criminal penalty against a parent for providing false residential information to enroll a child in a local school system or to hold a parent liable for the tuition or educational costs in such a situation. The General Assembly may enact such enabling authority.
January 2005	04-090	A school board has the authority to establish policies and procedures to enforce the compulsory attendance law. A parent's awareness and support of a child's absence from school does not allow repeated absenteeism, tardiness, or early departures.
2004		
October 2004	04-074	There is no express authority for the school board to loan money to the board of supervisors. School boards are subject to the Dillon Rule and have only those powers that are expressly given and those that are necessarily or fairly implied from expressly granted powers.
March 2004	04-009	There is authority for the county board of supervisors to appoint a tie breaker for the county school board.
March 2004	04-011	A school board may act as the responsible public entity under the Public-Private Educational Facilities and Infrastructure Act of 2002. A school board acting as the responsible public entity has the authority to enter into a comprehensive agreement under the Act only after receiving approval from the local governing body.
January 2004	03-120	The Loudoun County School Board may lease the 1883 schoolhouse and adjacent brick building to Loudoun Museum Inc., if the leased property is used for the benefit of the school district and the nominal lease is consistent with good business judgment and sound business principles. The question of whether the nominal lease benefits the school district and is consistent with good business judgment and sound business principles is a question of fact to be resolved by the school board.
2003		
October 2003	03-048	Whether a particular organization is a 'private, denominational, or parochial school' under Virginia's compulsory attendance statute requires a factual review. For many years, Attorneys General have concluded that § 2.2-505 of the Code does not contemplate that AG opinions be rendered on factual determinations.

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October 2003	03-083	A school board has the authority to discipline a student who possesses an unloaded firearm in a locked vehicle trunk on school property or at a school sponsored activity.
August 2003	03-041	A public charter school is authorized to contract with a local school board, an institution of higher education, or a third party for use of building and grounds owned by a limited liability company in which a participant in a charter school application has ownership interest.
April 2003	02-097	A school board has the authority to remove books from a public school library for reasons such as pervasive vulgarity, educational unsuitability, or age inappropriateness. This decision requires the school board to make a factual determination.
2002		
December 2002	02-106	School division coaches and other school personnel may render first aid to students when necessary. Unless such persons are certified athletic trainers, they may not employ physical modalities or tape students' ankles or wrists in order to prevent or treat injuries or other physical conditions. Certified athletic trainers are responsible for actions of non-certified individuals acting under their supervision and direction and they must ensure that such individuals do not perform functions requiring the professional judgment or discretion of certified athletic trainers. A school board that fails to hire a certified athletic trainer is entitled to absolute sovereign immunity. Absent gross negligence, school board employees may be entitled to sovereign immunity for failure to hire a certified athletic trainer.
December 2002	02-119	A parent may consent to drug testing for a minor child and obtain the results of non-diagnostic drug testing performed on a minor child who is not receiving treatment for substance abuse.
November 2002	02-089	The Fairfax County School Board has no authority to add sexual orientation as a category in its nondiscrimination policy, absent enabling legislation.
November 2002	02-099	The Chesapeake School Board has the authority, based on population count, to increase the annual salary of its members to the maximum paid to city council members, and the annual salary of its chairman to the maximum paid to the city mayor, upon passage of a motion in 2003 approving specific salaries of \$25,000 and \$27,000, respectively. July 1, 2004, is the earliest date that such salary increases may be effective.
August 2002	02-035	Transferring teacher licensure from the Board of Education to an independent licensure board is inconsistent with Article VIII, § 4 of the Constitution of Virginia which charges the board with the general supervision of the Commonwealth's school system.
2001		
December 2001	00-111	A teacher or other school administrator who suspects (1) that an 18-year-old student is having a sexual relationship with a 13- or 14-year-old student, or (2) that two students, who are minors and whose age difference falls within purview of

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		§ 18.2-63, are engaging in sexual conduct, has a duty to report such activity to the local department of social services for investigation.
December 2001	01-095	A town that is not a separate school district has no authority to impose a tax on town consumers of local cellular telecommunication services after January 1, 2000.
November 2001	01-089	When a law-enforcement officer conducting a search as conservator of peace with special police powers acts in a law-enforcement capacity seeking evidence of a crime, he must meet the standard of probable cause of an actual arrest to justify the search. School searches conducted by a school safety officer as a school official must be assessed in terms of general reasonableness. When such searches are conducted by a school safety officer as conservator of peace with special police powers seeking evidence of a crime, it must be assessed in terms of probable cause.
September 2001	01-075	Buildings owned and used as schools by the City of Hopewell are "public places" that may not be sold without a recorded three-fourths affirmative vote of all members elected to city council.
June 2001	01-025	Local law-enforcement authorities have discretionary authority to share with public school officials information concerning any offense committed by student(s) off school property on a school bus, school property, or at a school-sponsored activity that would be a criminal offense if committed by an adult.
February 2001	01-008	State school funding continues to be distributed to localities operating a school system resulting from consolidation of separate systems only when such funds have been distributed to each locality prior to consolidation of the governmental program or function. A joint school system operated by a county and city and two school boards pursuant to a written agreement did not result from consolidation of two separate systems. Consolidation will occur upon the transition of city to town status, and current state school funding distribution will continue, in accordance with the statutory schedule.
2000		
December 2000	00-090	Buildings owned and used as schools by the City of Hopewell are "public places" that may not be sold without the recorded three-fourths affirmative vote of all members elected to city council.
November 2000	00-022	A person with a valid concealed weapons permit who carries a gun to school and leaves it unattended, and not on his or her person, is in violation of the statute prohibiting weapons possession on school property except when engaged in any of the activities specifically exempted. Such person is not entitled to carry a gun onto school property or a school bus.
October 2000	00-075	The Board of Education, and not the AG, has been delegated authority to determine whether Virginia law permits an enrolled, full-time public school student to transfer credit for courses completed outside the public school system that offers similar courses.
July 2000	00-049	Local law enforcement authorities may report to the principal of a local public school or his designee any offense committed

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		by a student, which would be a felony if committed by an adult or an adult misdemeanor involving incidents occurring on a school bus, school property, or at a school sponsored activity. Sharing of such reports is discretionary and not mandatory.
July 2000	00-042	Exemption from the Virginia Freedom of Information Act's open meeting requirement is not available to an elected school board to discuss performance and other related matters of individual board members.
March 2000	00-002	As opposed to prayer conducted in a public school context, opening sessions of legislative and deliberative public bodies with prayer is deeply embedded in history and the tradition of this country, does not present danger of establishing religion, and is therefore constitutional. The audience to which prayer is directed consists of adults who presumably are not susceptible to religious indoctrination or peer pressure. A school board meeting is a meeting of adults with official business and policy making duties; it does not warrant the constitutional scrutiny that an official public school function would warrant with regard to conducting prayer. Local school boards may open meetings with prayer.
January 2000	99-103	School board policy requiring drug testing of public school students and school board employees must be reasonable under Fourth Amendment standards and relatively unobtrusive. The interest of the school board in conducting such compulsory, suspicionless searches must be balanced against individual privacy interests. The balancing test focuses on (1) whether a pronounced drug problem exists within a targeted group, and if not, whether the experience of a pronounced drug problem is unnecessary to justify suspicionless testing; and (2) the magnitude of harm that could result from the use of illicit drugs. Reasonableness of any search depends on the facts of each particular case.
January 2000	99-101	The Fairfax County School Board lacks the authority to require parents to pay for testing and a treatment program as a condition to granting excused absences to pupils suspended for substance abuse. The Board of Education may not authorize a local school board to establish a program that conditions a suspended student's participation in a program on the parents' payment of costs of participation.
January 2000	99-102	School buses are exempt from the statutory requirement that a child under age four be properly secured in an approved child restraint device. Public school buses used to transport children in a Head Start program are not required to provide children under four with child safety seats regardless of whether such buses have seat belts.
1999		
November 1999	99-039	The reasonableness of a sheriff's use of drug-sniffing dogs to search the person of students attending public school depends on whether the facts support a suspicionless search that is relatively unobtrusive coupled with the government's interest in conducting the search.
October 1999	99-037	Petersburg changed from an appointed to an elected school board. The change must have pre-clearance by the U.S.

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		Department of Justice under the Voting Rights Act. Election of the school board from single-member election districts would require authorization from the General Assembly.
April 1999	Link	The annual meeting at which each school board is required to elect a chairman from its membership falls within the purview of the Freedom of Information Act's definition of 'meeting' which must be open to the public. The list of personnel-related actions which a school board may discuss in executive session does not include an election. The local school board may not meet in executive session to discuss the selection of its chairman and vice-chairman.
April 1999	Link	A local school board is not permitted to inquire into, or require documentation to verify, a student applicant's citizenship or visa status for the purpose of ascertaining whether the student is a bona fide resident qualified to attend a free public school in a school district.
1998		
December 1998	Link	No statute establishes procedures to be followed by school board members and division superintendents in hiring school personnel. The extent of a school board member's involvement in the preliminary stage of the hiring process depends on employment policies adopted by the board.
December 1998	Link	The authority for school boards to lease real estate for a term equal to or longer than the life of repairs/improvements to the property suggests the intent to include long-term leases within the authorization. The school board is responsible for maintaining school buildings; the lessor may perform management and maintenance duties for the school facility only if selected pursuant to requirements of the Procurement Act or if the lease so provides. The school board may enter into a lease-purchase agreement with a private entity for real estate, including a school building.
November 1998	Link	The City of Colonial Heights must provide free public schooling to a student who resides with parent(s) in a house located in Chesterfield County on a lot bisected by the city and county school division boundaries.
June 1998	Link	Local school divisions may not share the results of state police criminal records checks, fingerprinting, and sexual registry checks, regardless of whether the prospective school board approves.
1997		
December 1997	Link	A local school board must abide by the legislative mandate to allow transfer of credits earned in a private school or through home instruction toward award of a high school diploma, subject to conditions prescribed by the Board of Education. A local school board may not impose requirements inconsistent with the standards of accreditation promulgated by the board.
September 1997	Link	The affirmative vote of the Richmond City School Board on June 20, 1996, to increase the salary of new term members was not authorized. The 1996 amendments applicable to school board salaries on and after July 1, 1996, do not apply to actions taken before that date.

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April 1997	Link	Absent clear statutory authority, a governing body may not assume control over construction of public schools or expenditure of funds for that purpose. Such body may review appropriations made to recipient agencies to ensure proper expenditure of public funds and may consolidate certain duplicative functions. The board of supervisors may not remove statutory authority of the school board to erect, furnish, and equip necessary school buildings; to manage and control funds made available to a school board for public schools; and to incur costs and expenses.
1996		
November 1996	Link	Whether early termination provisions of a particular school board lease are inconsistent with the requirement that the lease's terms be equal to or longer than the useful life of repairs or improvements to real property is a question of fact to be determined by the school board's counsel on a case-by-case basis and not by the AG. The requirement indicates legislative intent to assure that the public will receive the benefit of the expenditure of public funds by the school board, as lessee, to improve property.
June 1996	Link	A cellular telephone is not a portable communications device similar to a beeper, possession of which is prohibited on public or private school grounds.
May 1996	Link	A vacancy created by the resignation of a commission-appointed school board member following approval by qualified county voters to change to an elected school board and after initial election of members to a school board composed of both elected and appointed members must be filled for the unexpired term by school board selection commission.
April 1996	Link	Falls Church must provide free public schooling to a student who resides in a house in Fairfax County that is located on a residential lot partially within the city, whether or not another structure exists on a city residential tract. In determining residency for purposes of providing tuition-free schooling, the school board may consider the student's age and custody of the student.
1987		
December 1987	Link	School officials may consider a guardianship order as evidence of bona fide residence for a child to be enrolled without tuition in the public schools, but may not require a guardianship order as the only evidence acceptable for such purposes. A clerk of the circuit court may deny a guardianship order which is sought solely for school attendance purposes. In addition, a circuit clerk may ascertain the suitability of the proposed guardians and appointments made pursuant to § 31-4 by reviewing all the evidence presented in the petition with the ultimate determination based on the best interest of the child.