

Adopting a Resolution to Implement an Amendment to § 22.1-207.4 of the *Code of Virginia* (HB 2114 – 2015) Pending Incorporation into the *Regulations Governing Nutritional Guidelines for Competitive Foods Available for Sale in the Public Schools*

Resolution Number 2015-34

November 19, 2015

The Board of Education adopts the Resolution, as amended, to Implement an amendment to § 22.1-207.4 of the *Code of Virginia* (HB 2114 – 2015) pending incorporation into the *Regulations Governing the Nutritional Guidelines for Competitive Foods Available for Sale in the Public Schools*.

**A RESOLUTION TO ESTABLISH AND DEFINE EXEMPTIONS FOR
SCHOOLSPONSORED FUNDRAISERS PENDING INCORPORATION IN THE
PROPOSED *REGULATIONS GOVERNING NUTRITIONAL GUIDELINES FOR
COMPETITIVE FOODS AVAILABLE FOR SALE IN THE PUBLIC SCHOOLS***

WHEREAS, Section 10 of the Child Nutrition Act of 1966, 42 USC 1779, as amended by the Healthy, Hunger-Free Kids Act of 2010 (HHFKA), requires that all food sold outside of the school meal programs, on the school campus, and at any time during the school day must meet the nutrition standards set forth in the interim final rule titled *National School Lunch Program and School Breakfast Program: Nutrition Standards for All Foods Sold in School as Required by the Healthy, Hunger-Free Kids Act of 2010*. This interim final rule, also known as the Smart Snacks rule, was published on June 28, 2013 and effective on July 1, 2014 for all schools participating in the National School Lunch and School Breakfast Programs.

WHEREAS, the HHFKA provides flexibility for special exemptions for the purpose of conducting school-sponsored fundraisers during which foods that do not meet the nutrition standards for Smart Snacks may be sold.

WHEREAS, the United States Department of Agriculture (USDA) has issued guidance to state agencies in USDA *Memo # SP 36-2014 SUBJECT: Smart Snacks Nutrition Standards and Exempt Fundraisers* which provided detailed guidance regarding fundraiser exemptions. Section 210.11(b)(4) of the interim final rule specifies that such specially exempted fundraisers must not take place more often than the frequency specified by the state agency. As outlined in the interim final rule, if a state agency does not specify the exemption frequency, the state agency is electing to establish a policy that no fundraiser exemptions may be granted.

WHEREAS, the Smart Snacks rule only applies to foods and beverages sold to students on the school campus during the school day. The nutrition standards do not apply to foods and beverages sold at events held after school, off campus, or on weekends, such as school plays or sporting events.

WHEREAS, House Bill 2114, which amended § 22.1-207.4 of the *Code of Virginia* (Code), was approved by the 2015 General Assembly and signed by Governor McAuliffe and provides that

the regulations promulgated pursuant to this section regarding the nutritional guidelines for competitive foods shall permit each public school to conduct on school grounds during regular school hours no more than 30 school-sponsored fundraisers per school year, during which food that does not meet the nutrition guidelines for competitive foods may be sold to students.

WHEREAS, it is the intent of the Board of Education to incorporate this amendment to § 22.1-207.4 of the *Code* into the proposed *Regulations Governing Nutritional Guidelines for Competitive Foods Sold in Virginia Public Schools* at a future time in compliance with the requirements of the Administrative Process Act.

NOW THEREFORE, BE IT RESOLVED by the Board of Education that local school divisions shall permit, effective with the date of adoption of this resolution, each public school to conduct on school grounds during the regular school hours, no more than 30 school-sponsored fundraisers per school year, during which food and beverages that do not meet the nutrition guidelines for competitive foods may be sold to students. Pursuant to the *Regulations for the School Breakfast Program and the Regulations Governing School Lunch Sale of Food Items*, the sale of any such food or beverage items cannot take place in competition with the National School Lunch and School Breakfast programs from 6 a.m. until after the close of the last breakfast period and from the beginning of the first lunch period to the end of the last lunch period.

The Board of Education encourages school divisions to incorporate local standards for fundraisers that include foods and beverages into their respective Local Wellness Policies that are required by federal regulations to ensure consistency among their respective schools in the implementation of these fundraising exemptions. The Board will be providing guidance to assist school divisions for incorporating these local standards into required Local Wellness Policies. That guidance will be developed following an analysis of what other states have done and the best practices.

Adopted in Richmond, Virginia, This Nineteenth Day of November 2015.

Dr. Billy K. Cannaday, Jr.
President
Minutes of November 19, 2015