

2008 General Assembly Update: Changes in Virginia School Law



by Roger E. Jones, Ed.D.

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INTRODUCTION

The General Assembly passed numerous pieces of legislation during the 2008 session, some of which have a direct effect on the operation of K-12 schools. This document provides a summary of relevant legislation and is divided into the following categories: Safety and Discipline; Curriculum and Instruction; Student Records; Personnel; and Miscellaneous. Two important State Superintendent's Memos are also referenced.

SAFETY AND DISCIPLINE

Sex Offenders on School Property

An amendment to §18.2-370.5 states that every adult convicted of a sexually violent offense is prohibited from entering and being present on school property during school hours and “during school-related and school-sponsored activities.” (**Editor's Note:** The 2007 General Assembly passed legislation prohibiting violent sex offenders from being on school property during school hours; however, it created confusion since there was no agreement on what school hours meant. Did school hours literally mean 8-4 or did it extend to when students were involved in extra-curricular activities? This legislation makes it clear that it applies to activities as well.)

An amendment to §18.2-370.1 prohibits adults convicted of certain sex offenses after July 1, 2008, from living within 500 feet of a public park owned by a county, city, or town that shares a boundary line with a school and which is regularly used for school activities.

Bus Stop Signs

Section 33.1-223.2:18 was added to the *Code of Virginia* allowing local school boards authority to install signs or other devices to indicate school bus stops subject to Virginia Department of Transportation approval. Expenses for such signs are the responsibility of the local school division.

Employment of Bus Drivers

An amendment to §40.1-100 clarifies that persons under the age of 18 are not permitted to drive school buses.

School Employees and Child Abuse

Amendments to several sections of the Code (22.1-296.1, 22.1-296.4, 22.1-307, and 63.2-1505) prohibit a school division from employing someone having direct contact with students if the person is the subject of a founded case of physical or sexual child abuse. The amendments also require applicants who have lived in another state during the past 5 years to submit to a registry search from that state as well as requiring the dismissal of a teacher who while employed becomes the subject of a founded case of physical or sexual abuse of a child when that person has exhausted all appeals.

The Department of Social Services is also required to report any founded complaints of sexual abuse of a child to the school board where the individual is employed.

Sexual Abuse Policies

Section 19.2-291.1 was added to require court clerks to notify the Superintendent of Public Instruction when a person licensed by the Board of Education is convicted of a felony drug crime or felony sex crime involving a child victim. In addition, an amendment to §22.1-253.13:7 requires local school boards to develop policies and procedures to address complaints of sexual abuse of a student by a teacher or other school board employee. (**Editor's Note:** Hopefully, school board policies already address this issue; however, if not, a policy will need to be developed. In either case, it is important for principals to know, understand, and implement a consistent policy. If you cannot quote the policy, find it and review it.)

At-Risk Programs

By adding §22.1-199.5, school boards are allowed to establish after school programs to prevent at-risk youth from engaging in illegal or gang-related activities. Any such programs must be paid for with local funds.

Bus Drivers and Wireless Communication

Section 46.2-919.1 prohibits the use of wireless telecommunications devices "handheld or otherwise" by school bus drivers, except in emergencies or when the vehicle is lawfully parked and for the purposes of dispatching. Two-way radios are permitted with permission of the owner (school division). (**Editor's Note:** It is important that bus drivers know about this change. Someone at the division level should share this change with drivers on the day they return to work.)

CURRICULUM AND INSTRUCTION

Physical Education Requirements

An amendment to §22.1-253.13:1 requires local school boards to provide a physical fitness program with a GOAL of 150 minutes per week for all students. The program can include physical education classes, extracurricular activities, or other activities deemed appropriate. The goal must be incorporated into the school division's wellness plan. (**Editor's Note:** This goal reflects an average of 30 minutes a day. In grades K-10, it is a realistic goal within the current offerings of most schools. The interesting dilemma will be how school divisions address the goal for students in grades 11 and 12 where physical education is not required. If the goal is taken seriously, additional monitoring of activities will be required as well as discussion about changes in grades 11 and 12, particularly for students who are engaged in limited physical activity.)

Nutrition and Physical Activity Best Practices

Section 22.1-16.4 requires the Virginia Department of Education to develop a database of best practices regarding nutrition and physical education. This database must be accessible to all school divisions, but no division can be required to submit information.

Commission on Civics Education

An amendment to §22.1-212.22 extends the work of the Commission on Civics Education. The commission was due to expire on July 1, 2008, but the amendment extends the commission's work to July 1, 2010.

Career and Technical Education

An amendment to §22.1-227.1 requires the Virginia Board of Education to develop a plan to increase the number of students receiving industry certification and state licensure as part of their career and technical education program. Each school division is required to include this goal in their plan.

Family Life

Topics covered in family life were expanded through an amendment to §22.1-207.1. Mental health education and mental health awareness are now required topics to be covered. **(Editor's Note:** The legislation does not include where or when the mental health issues are taught. Most likely, the topics will be covered in the secondary curriculum.)

STUDENT RECORDS

Advanced Technical Diploma

An amendment to §22.1-253.13:4 gives students a choice of receiving an advanced technical diploma or an advanced studies diploma when they meet the criteria for both diplomas. **(Editor's Note:** Although few students will meet the requirements for an advanced studies diploma while at the same time being a career-technical completer, it is important for someone in the high schools to monitor and make sure that students are given the diploma option if they meet the requirements for both. Counselors, particularly, need to be aware of this change.)

Written Documentation of a Transfer Student

Section 22.1-254.02 was added to the Code. This amendment requires school divisions to obtain written or electronic documentation "to the extent practicable" of a student's transfer before making status classification changes in an information management system. **(Editor's Note:** This could be a major or a minor issue depending on how "to the extent practicable" is interpreted. This change needs to be discussed with counselors, and they will need to be aware of future state department guidance. At a minimum, there will need to be more diligence in monitoring student transfers. One of the major issues will relate to students who are the children of illegal immigrants who move from community to community.)

Student Records

Section 23-2.1:3 was added to the Code and is noted verbatim: *Each public and private institution of higher education may require that any student accepted to and who has committed to attend, or is attending, such institution provide, to the extent available, from the originating school a complete student record, including any mental health records held by the school. These records shall be kept confidential as required by state and federal law, including the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g.* **(Editor's Note:** This is enabling legislation which allows the colleges to request such information. It does not appear to require colleges to do so. Furthermore, most mental health records are not included in cumulative folders. Hopefully, additional guidance will be forthcoming. It is important for counselors to be aware of this change.)

PERSONNEL

Freedom of Information Act (FOIA)

Amendments to §§ 2.2-3705.3 and 2.2-3711 add an exemption to the Freedom of Information Act (FOIA). The amendment states that investigator notes and other correspondence connected to an active investigation conducted for or on behalf of the Virginia Board of Education and which is related to denial, suspension, or revocation of teacher license are not accessible under FOIA. The state board can discuss these records in a closed meeting. The records can also be shared with a local school board or superintendent for consideration in taking personnel action. After the investigation is completed, the records are available to any requester as long as they do not reveal the identity of the charging parties, persons supplying the information, or others involved in the investigation.

Provisional License and Military Service

Section 22.1-299 now permits the Virginia Board of Education to extend a 3-year provisional license an additional year for each school year or portion thereof when a teacher is activated or deployed for military service. The legislation contained an emergency clause which made it in force upon passage.

MISCELLANEOUS

Textbook Purchases

Amendments to numerous sections of the Code (22.1-238, 22.1-239, 22.1-241, 22.1-242, and 22.1-243) expands the definition of textbook to include print and electronic media. The changes also add that if consumable materials are sold to students, the school board must provide those materials at a reduced rate, or free, to students unable to afford them. (**Editor's Note:** It is important to make sure that policies and procedures exist to provide required consumable materials to students who receive free or reduced price lunch.)

Amendments also allow any private school, with approval of the school board and publisher, to purchase textbooks from a local school board's contract. Private schools must order, purchase, and receive shipments. (**Editor's Note:** This legislation continues the 2007 General Assembly trend to be supportive of private schools. In 2007, legislation was passed to allow private school students to ride public school buses with permission of the local school board and when the cost is borne by the private school.)

Online Budgets

Amendments to §§ 22.1-93 and 15.2-2503 require governing bodies and school boards to publish their approved budgets annually online. If there is no website, budgets must be available in hard copy.

Rights of Individuals with Disabilities

Previous state law noted that a person with a disability is entitled to full and equal accommodations, advantages, facilities, and privileges of airplanes, railroad trains, subways, public modes of transportation, restaurants, hotels, and other places. An amendment to §51.5-44 adds "public entities including schools" to the list. (**Editor's Note:** On the surface, this looks like it has minimal impact especially since the Americans with Disabilities Act (ADA) already requires access. However, the ADA applies only to new construction or major renovations. Older schools that have not been renovated may not meet the requirements of the new state law. This new legislation requires

someone to closely monitor the changes that may be required in the division's Capital Improvement Plan (CIP) to make sure that all schools are compliant with the law.)

Home Instruction

Amendments to §22.1-254.1 provide changes to home schooling. One amendment eliminates the requirement for correspondence courses to be approved by the State Superintendent of Public Instruction in order to qualify for home instruction. The amendments also allow parents to have instruction delivered through a "correspondence course or distance learning program or any other manner." Additional amendments attempt to clarify what parents have to do to demonstrate student achievement to the division superintendent. The amendments retain the option of providing a composite score in or above the fourth stanine on a normed achievement test. The amendments also provide additional options for showing adequate progress. These include but are not limited to "(a) an evaluation letter from a person licensed to teach in any state, or a person with a master's degree or higher in an academic discipline, having knowledge of the child's academic progress, stating that the child is achieving an adequate level of educational growth and progress" or (b) a report card or transcript from a community college or college, college distance learning program, or home-education correspondence school. (**Editor's Note:** While the General Assembly supports higher standards and accountability for public schools, they continue to lower the requirements for students who are home-schooled.)

Classification of School Funds

Previous law provided for the following classification of school funds in the school division budget: instruction; administration, attendance and health; pupil transportation; operation and maintenance; school food services and other noninstructional operations; facilities; debt and fund transfers; and contingency reserves. An amendment to §22.1-115 adds technology as an additional classification for school funds.

Joint or Regional Schools

An amendment to §22.1-26 allows any joint, regional, or regional charter school operating prior to July 1, 2008, to request a waiver of any new regulations implemented after that date. It also allows joint and regional schools to set their calendars so that the first day of classes coincides with the calendar of any of the participating school divisions, including those with a waiver to start before Labor Day. An emergency clause made the change immediate.

Student's Expression of Religious Viewpoint

The General Assembly added § 22.1-203.3 to the Code which states that "students may express their beliefs about religion in homework, artwork, and other written and oral assignments free from discrimination based on the religious content of their submissions. Such home and classroom work shall be judged by ordinary academic standards of substance and relevance and against other legitimate pedagogical concerns identified by the school." (**Editor's Note:** This addition to the Code should be shared with teachers. While there is no United States Supreme Court decision on this issue, the law appears to be consistent with federal district and court of appeals case law decisions.)

No Child Left Behind (NCLB)

Section 1 of Chapter 826 requires the Virginia Board of Education to recommend to the General Assembly whether or not Virginia should withdraw from NCLB unless the reauthorization includes acceptable revisions. The state board has until June 30, 2009, to develop a plan to withdraw and to

submit the plan to the Governor and General Assembly. (**Editor s Note:** This legislation appears to assume that Congress would reauthorize NCLB during this congressional session. That has not occurred. It appears that Congress is waiting for a new president and a new secretary of education before making changes. Virginia would prefer for its standards and accountability system set forth by the Standards of Quality (SOQ), Standards of Learning (SOL), and Standards of Accreditation (SOA) to be accepted for meeting the requirements of NCLB. It is unlikely that the state board would recommend withdrawing from NCLB before it is reauthorized.)

Virginia Career Readiness Certificate Program

Section 2.2-2674.01 creates the Virginia Career Readiness Certificate Program which is to be designed to certify the workplace and college readiness skills of Virginia students. The program is to ensure that students are prepared for continued education and workforce training, successful employment, and career advancement. Regulations will be developed by the Virginia Workforce Council in consultation with the Secretary of Education. The program may be offered through public schools, community colleges, one-stop centers, technical centers, higher education institutions or any other institution determined appropriate. (**Editor s Note:** Implications of this legislation are unknown, but it is something that principals should monitor.)

STATE SUPERINTENDENT S MEMOS

Immunization Requirements

State Superintendent s Memo No. 59 (March 14, 2008) references immunization requirements. For the complete list, go to: <http://www.vdh.virginia.gov/epidemiology/immunization/requirements.htm>.

Previous General Assembly legislation requiring the Human Papillomavirus Vaccine (HPV) for female students entering the sixth grade goes into effect on October 1, 2008. The first dose must be administered before the child enters sixth grade (§32.1-46, subdivision 12 of the Code). Since the effective date occurs after the 2008-09 school year begins, the vaccine will not be required for school entry until the 2009-10 school year. Details concerning the implementation of this legislation will be forthcoming from the Virginia Department of Health. School divisions should begin notifying parents once the regulations or details are provided.

Family Educational Rights and Privacy Act (FERPA)

State Superintendent s Memo No. 248 (November 30, 2007) referenced federal guideline changes concerning FERPA. Federal officials met with educators, first responders, parents and others to address concerns related to emergency preparedness and school safety. Several issues emerged, including the need for additional guidance on the Family Educational Rights and Privacy Act (FERPA), the federal law that protects the privacy of students' education records.

In response, the U.S. Department of Education developed three new guides: one for K-12 educators, one for higher education officials, and one for parents. The new FERPA guidelines and brochures are available online at <http://www.ed.gov/policy/gen/guid/fpco/ferpa/safeschools/>. (**Editor s Note:** Principals and counselors should review the K-12 guidelines.)

About the Editor

Roger E. Jones (rjones@vassp.org) has been the Director of the Virginia Association of Secondary School Principals Center for Educational Leadership at Lynchburg College since 2003. Dr. Jones is a former VASSP president and has served as an assistant superintendent and as a building level principal at the middle and high school levels. He has been VASSP's legal editor since 1988.

For More Information

For more information about the impact of laws passed by the Virginia General Assembly, policies and regulations passed by the Virginia Board of Education, and laws passed by Congress, log-on to VASSP's Web site at www.vapincipal.org. For strategies on addressing public policies and the impact on public schools and other information, please log-on to VASSP Members Only Web site at www.edleader.org. (*EdLeader*® is a registered trademark of the Virginia Association of Secondary School Principals, Inc.) Postings are made regularly on the Internet Web site by VASSP Director of Government Relations Elizabeth "Bet" Neale (bneale@vassp.org). Ms. Neale and VASSP Executive Director Dr. Randy Barrack (rbarrack@vassp.org) are General Assembly lobbyists.

For case law affecting the principal's role in public school education read VASSP's bimonthly publication, *Developments In School Law*, written by T. Page Johnson (tpjohnson@vassp.org). *Developments In School Law* is now in its twenty-first year of continuous publication. Mr. Johnson, a former VASSP director of government relations, is a consultant on school law and policy and serves as an adjunct professor of school law at the University of Virginia. Mr. Johnson, Dr. Jones, and Dr. Barrack are authors of *The Legal Handbook for Virginia School Administrators, 3rd edition*, *Omni Publishers, Inc. Bulverde, Texas*.

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The mission of the Virginia Association of Secondary School Principals, Inc., is to assist school principals and assistant principals in providing leadership to their schools and communities for the purpose of improving the education of Virginia's youth.

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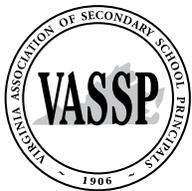
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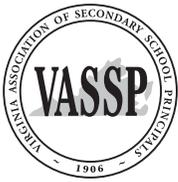
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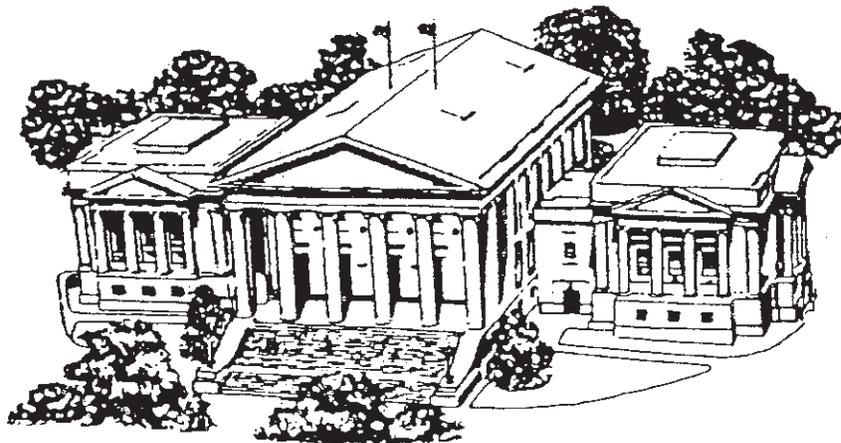
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