

99-101

EDUCATION: SYSTEM OF PUBLIC SCHOOLS; GENERAL PROVISIONS — PROGRAMS, COURSES OF INSTRUCTION, ETC. — BOARD OF EDUCATION — PUPILS — DISCIPLINE.

CONSTITUTION OF VIRGINIA: EDUCATION.

Fairfax County School Board lacks authority to require parents to pay for testing and treatment program as condition to granting excused absences to pupils suspended for substance abuse. Board of Education may not authorize local school board to establish program that conditions suspended student's participation in program on parents' payment of costs of participation.

The Honorable Joseph V. Gartlan Jr.
Member, Senate of Virginia
January 11, 2000

You ask whether, as a condition to granting excused absences to a pupil suspended for substance abuse, a local school board may require the pupil to participate in a testing and treatment program and impose the costs of the program on the pupil's parents.

You explain that the Fairfax County School Board wishes to adopt a policy requiring students suspended for substance abuse on school property to undergo testing and assessment with parental participation and, if recommended after the testing and assessment, to undergo treatment. You state that the policy would permit the student to undergo the testing, assessment and treatment through either the local public mental health agency or a private practitioner. Whether provided by the local mental health agency or by a private practitioner, the parents are to pay the costs of the testing, assessment and treatment. If the treatment is provided by a local mental health agency, the fee may be based on a sliding scale. Only upon satisfying the testing and treatment requirements would a student be granted excused absences for the suspension and thus be allowed to make up work missed.

You ask whether the Fairfax County School Board has the authority to condition the granting of excused absences on the parents' obtaining, at their own expense, substance abuse testing, assessment and treatment for the student. Section 22.1-6 of the *Code of Virginia* restricts the authority of a school board to impose fees on pupils. The section provides that "[e]xcept as provided in [Title 22.1] or as permitted by regulation of the Board of Education, no fees or charges may be levied on any pupil by any school board." No regulation or statute permits a local school board to impose the type of charge you describe.¹ It is accordingly my opinion that the Fairfax County School Board lacks authority to require parents to pay for substance abuse testing and treatment as a condition to a pupil's being granted excused absences for a suspension. This result is consistent with a 1982 opinion of the Attorney General which concludes that a local school board may not make participation in a substance abuse counseling program, for which the parents must pay, an alternative to expulsion.²

You also ask whether the Board of Education may grant the Fairfax County School Board the authority to impose a charge for the type of program you

describe.³ No statute or regulation expressly authorizes the Board of Education to approve such a program or charge by a local school board. In addition, § 22.1-209.1:9, which establishes the Community-Based Intervention Program for Suspended and Expelled Students (the "Program") and establishes a mechanism for funding the Program,⁴ indicates that the General Assembly intends programs of the nature you describe to be administered in accordance with the statute.

The 1999 Session of the General Assembly enacted § 22.1-209.1:9.⁵ The purpose of the Program is "to provide interim instructional programs, intervention, and supervision for students in the public schools who have been suspended, excluded or expelled from school attendance."⁶ The Program is to "consist of five regional projects located throughout the Commonwealth."⁷ Students are eligible to attend the Program if recommended by the local school board, ordered by a court in the Commonwealth, or enrolled in the Program by a parent.⁸ The Department of Education is to administer the Program and is authorized to establish a fee schedule based on a parent's ability to pay, with waivers to be granted if the parent cannot afford the costs.⁹

Section 22.1-209.1:9 indicates a legislative intent that programs providing intervention and supervision for students who have been suspended or expelled are to be administered by the Department of Education, with any charge for a student's participation in the program imposed in accordance with the fee schedule established by the Department. It is thus my opinion that, under current law, the Board of Education may not authorize a local school board to establish a program that conditions a suspended student's participation in the program on the parents' payment of the costs of the participation.

¹Section 22.1-206 requires the public schools to provide instruction concerning drugs and drug abuse but does not authorize a fee for this instruction.

²1981-1982 Op. Va. Att'y Gen. 144; see also 1973-1974 Op. Va. Att'y Gen. 316 (in absence of statute, local school board may not require children to have dental examination as prerequisite to school attendance; school board has implicit power only to extent necessary to protect health of other children or to enable child to benefit from education).

³Under its general power to "promulgate such regulations as may be necessary to carry out its powers and duties and the provisions of [Title 22.1]," the Board of Education has by regulation authorized local school boards to impose certain fees on pupils. Section 22.1-16; see 8 VAC 20-370-10 (Law. Coop. 1996) ("Fee and charges" regulation). Whether the imposition of fees conflicts with the mandate of Article VIII, § 1 of the Constitution of Virginia (1971) that all children of the Commonwealth be provided a "free" public education depends on the nature of the particular fee. See Op. Va. Att'y Gen.: 1977-1978 at 364, 365 (Constitution does not require that all materials and supplies be provided free to every student); 1976-1977 at 248 (fee for activity that is not required part of curriculum does not conflict with Constitution).

⁴See also § 22.1-209.1:10 (creating Community-Based Intervention Program for Suspended and Expelled Students Fund).

⁵1999 Va. Acts ch. 440, at 600, 600 (appearing in act as § 22.1-209.1:6).

⁶Section 22.1-209.1:9(A).

⁷Section 22.1-209.1:9(C).

⁸Section 22.1-209.1:9(B).

⁹Section 22.1-209.1:9(A)-(B). Section 22.1-277.03(B) requires that the notice to parents of a student's suspension or expulsion is to provide information "concerning the availability of community-based educational, alternative education, or intervention programs."