

OP. NO. 04-090

**EDUCATION: PUPILS – COMPULSORY SCHOOL
ATTENDANCE – DISCIPLINE**

School board has authority to establish policies and procedures to enforce compulsory attendance law. Parent's awareness and support of child's absence from school does not allow repeated absenteeism, tardiness, or early departures.

The Honorable Danny W. Marshall, III
Member, House of Delegates
January 31, 2005

Issue Presented

You ask whether local school boards have the authority to set standards for excused and unexcused absences and to determine what constitutes excessive tardiness and leaving school early. You also ask whether a parent's awareness and support of his child's absence excuses the absence thereby precluding enforcement action.

Response

It is my opinion that a board has the authority to establish policies and procedures to enforce the Commonwealth's compulsory attendance law. A parent's awareness and support of his child's absence from school does not, of itself, allow repeated absenteeism, tardiness, or early departures.

Applicable Law and Discussion

You relate that some school systems have had difficulty in enforcing attendance policies because courts have interpreted the applicable statutes to excuse a pupil's absence when the parent is aware of and supports the absence.

Article 1, Chapter 14 of Title 22.1, §§ 22.1-254 through 22.1-269.1, governs compulsory school attendance in the Commonwealth. Specifically, § 22.1-254(A) provides that:

Except as otherwise provided in this article, every parent, guardian, or other person in the

Commonwealth having control or charge of any child who will have reached the fifth birthday on or before September 30 of any school year and who has not passed the eighteenth birthday shall, during the period of each year the public schools are in session and for the same number of days and hours per day as the public schools, send such child to a public school or to a private, denominational or parochial school or have such child taught by a tutor or teacher of qualifications prescribed by the Board of Education and approved by the division superintendent or provide for home instruction of such child as described in § 22.1-254.1.

Section 22.1-254 sets forth circumstances under which the local school board either must or may excuse a pupil's attendance at school. For example, a "school board *shall* excuse from attendance at school" a student who, together with his parents, conscientiously is opposed to attendance at school by reason of a bona fide religious belief.¹ A "school board *may* excuse from attendance at school" a pupil who, in the judgment of the juvenile and domestic relations court "cannot benefit from education at [the] school."² These mandatory or permissive excusals provide relief from the compulsory attendance requirement in its entirety. This is distinguished from the circumstances you present, where a student is enrolled in school, but is chronically absent.

Section 22.1-258 authorizes school boards to employ attendance officers, who are charged with the enforcement of the provisions of the compulsory attendance law, and provides that:

Whenever any pupil fails to report to school on a regularly scheduled school day and no indication has been received by school personnel that the pupil's parent is aware of and supports the pupil's absence, a reasonable effort to notify by telephone the parent to obtain an explanation for the pupil's absence shall be made....

The statute establishes procedures to be followed in the event of a certain number of absences where "no indication has been received by school personnel that the pupil's parent is aware of and supports the pupil's absence."³ For example, after five days of such absences and where reasonable efforts to notify the parent have failed, school officials "shall make a reasonable effort to ensure that direct contact is made with the parent ... to obtain an explanation

for the pupil's absence and to explain to the parent the consequences of continued nonattendance."⁴ Section 22.1-258 next provides that:

If the pupil is absent an additional day after direct contact with the pupil's parent and the attendance officer has received no indication that the pupil's parent is aware of and supports absence, the attendance officer shall schedule a conference ... with the pupil, his parent, and school personnel.

The next such absence, without indication of parental awareness or support, triggers the use of judicial means to enforce the compulsory attendance law.⁵ The judicial remedies specified in § 22.1-258 are: "(i) filing a complaint with the juvenile and domestic relations court alleging the pupil is a child in need of supervision as defined in § 16.1-228^[6] or (ii) instituting proceedings against the parent pursuant to § 18.2-371^[7] or § 22.1-262."⁸ The provisions of § 22.1-258 do not apply to certain classes of pupils who are exempted from the compulsory attendance law.⁹

Section 22.1-258 makes plain that the steps described therein constitute the minimum response a school board must make to chronic absenteeism: "Nothing in this section shall be construed to limit in any way the authority of any attendance officer or division superintendent to seek immediate compliance with the compulsory school attendance law as set forth in [Article 1]."

Under the facts you present, some courts have concluded that, if a parent is or becomes aware of his child's absence and supports the absence, the courts regard such absences as excused; and, thus, no adverse consequences may befall either the parent or the pupil. While the authority of the parent is to be given great weight, and the statute assumes that parental knowledge and support will be given for legitimate reasons; the statute does not confer the right of repeated or sustained absenteeism in pupils even with parental knowledge or support.

Apart from § 22.1-254, the *Code* does not define "excused" absences. The Board of Education has promulgated "Regulations Governing Pupil Accounting Records"¹⁰ that address whether a pupil may be counted as present under certain specific circumstances.¹¹ The regulations provide that "[e]xcused full-day absences must not be counted as 'present' under any condition."¹² The regulations do not define an "excused full-day absence."

The next question is whether a school board may establish additional standards under which a pupil's absence may be excused. Section 22.1-254(G) provides that "[w]thin one calendar month of the opening of school, each school board shall send to the parents or guardian of each student enrolled in the division a copy of the compulsory school attendance law and the enforcement procedures and policies established by the school board." Plainly, school boards have the authority to set enforcement procedures and policies for school attendance.¹³ Such procedures and policies should not conflict with state law or the regulations of the State Board of Education.

I am unaware of any provision of law declaring that a parent's awareness and approval of his child's absence, standing alone, constitute an "excused absence." This conclusion is supported by § 22.1-279.3, which outlines parental responsibility for enforcing compulsory school attendance. Section § 22.1-279.3(D) specifically refers to the parents' responsibility "to ensure the student's compliance with compulsory school attendance law." A parent who fails to comply with the statute is subject to court order or a court order and a civil penalty not to exceed \$500.¹⁴ Not only does a parent's support of his child's chronic absenteeism fail to excuse the pupil's absences, the parent himself is subject to civil and criminal liability.¹⁵

Conclusion

Accordingly, it is my opinion that a school board has the authority to establish policies and procedures to enforce the Commonwealth's compulsory attendance law. A parent's awareness and support of his child's absence from school does not, of itself, allow repeated absenteeism, tardiness, or early departures.

¹Va. Code Ann. § 22.1-254(B)(1) (LexisNexis Supp. 2004) (emphasis added) (providing that such belief does not include political, sociological, or philosophical views or personal moral code).

²Section 22.1-254(C)(2) (emphasis added).

³Section 22.1-258 (LexisNexis Repl. Vol. 2003).

⁴*Id.*

⁵*Id.*

⁶"*Child in need of supervision*" means:

"1. A child who, while subject to compulsory school attendance, is habitually and without justification absent from school, and (i) the child has been offered an adequate opportunity to receive the benefit of any and all educational services and programs that are required to be provided by law and which meet the child's particular educational needs, (ii) the school system from which the child is absent or other appropriate agency has made a reasonable effort to effect the child's regular attendance without success, and (iii) the school system has provided documentation that it has complied with the provisions of § 22.1-258; or

"2. A child who, without reasonable cause and without the consent of his parent, lawful custodian or placement authority, remains away from or deserts or abandons his family or lawful custodian on more than one occasion or escapes or remains away without proper authority from a residential care facility in which he has been placed by the court, and (i) such conduct presents a clear and substantial danger to the child's life or health, (ii) the child or his family is in need of treatment, rehabilitation or services not presently being received, and (iii) the intervention of the court is essential to provide the treatment, rehabilitation or services needed by the child or his family."

Va. Code Ann. § 16.1-228 (LexisNexis Supp. 2004).

⁷"Any person 18 years of age or older, including the parent of any child, who (i) willfully contributes to, encourages, or causes any act, omission, or condition which renders a child delinquent, in need of services, in need of supervision, or abused or neglected as defined in § 16.1-228 ... shall be guilty of a Class 1 misdemeanor." Va. Code Ann. § 18.2-371 (LexisNexis Repl. Vol. 2004).

⁸"If the parent (i) fails to comply with the provisions of § 22.1-261 within the time specified in the notice; or (ii) fails to comply with the provisions of § 22.1-254; or (iii) refuses to participate in the development of the plan to resolve the student's nonattendance or in the conference provided for in § 22.1-258, it shall be the duty of the attendance officer, with the knowledge and approval of the division superintendent, to make complaint against the pupil's parent in the name of the Commonwealth before the juvenile and domestic relations district court. If proceedings are instituted against the parent for failure to comply with the provisions of

§ 22.1-258, the attendance officer is to provide documentation to the court regarding the school division's compliance with § 22.1-258. In addition thereto, such child may be proceeded against as a child in need of services or a child in need of supervision as provided in Chapter 11 (§ 16.1-226 et seq.) of Title 16.1." Section 22.1-262 (LexisNexis Repl. Vol. 2003).

⁹The provisions of the compulsory school attendance article do not apply to:

"1. Children suffering from contagious or infectious diseases while suffering from such diseases;

"2. Children whose immunizations against communicable diseases have not been completed as provided in § 22.1-271.2;

"3. Children under 10 years of age who live more than two miles from a public school unless public transportation is provided within one mile of the place where such children live;

"4. Children between the ages of 10 and 17, inclusive, who live more than 2.5 miles from a public school unless public transportation is provided within 1.5 miles of the place where such children live; and

"5. Children excused pursuant to subsections B and C of this section."

Section 22.1-254(H) (LexisNexis Supp. 2004).

¹⁰8 Va. Admin. Code 20-110-10 through 20-110-130 (West 2002).

¹¹8 Va. Admin. Code 20-110-50 (providing that student is counted present when attending school field trip and other activities approved by school board); 20-110-90 (providing that student is counted present when school is dismissed early due to inclement weather); 20-110-110 (providing that student who attends morning sessions and is dismissed for work in afternoon is counted present).

¹²8 Va. Admin. Code 20-110-100.

¹³Prior opinions of this Office have not questioned the existence of such authority. See, e.g., 2000 Op. Va. Att'y Gen. 114 (concluding that school board may not require that parents pay cost of testing

and treatment program as condition to grant excused absence to pupil suspended for substance abuse).

¹⁴See § 22.1-279.3(G)(1)-(2) (LexisNexis Supp. 2004); see also § 22.1-267 (LexisNexis Repl. Vol. 2003) ("Any child permitted by any parent, guardian, or other person having control thereof to be habitually absent from school contrary to the provisions of [Article 1] may be proceeded against as a child in need of supervision as provided in Chapter 11 ... of Title 16.1.").

¹⁵See, *e.g.*, 1987-1988 Op. Va. Att'y Gen. 334 (discussing available avenues for prosecution of parents for failing to send children to school).

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