



COMMONWEALTH OF VIRGINIA

Office of the Attorney General

Kenneth T. Cuccinelli, II
Attorney General

900 East Main Street
Richmond, Virginia 23219
804-786-2071

FAX 804-786-1991
Virginia Relay Services
800-828-1120
7-1-1

March 18, 2010

The Honorable Jackson H. Miller
Member, House of Delegates
General Assembly Building, Room 418
Richmond, Virginia 23219

Dear Delegate Miller:

I am responding to your request for an official advisory opinion in accordance with § 2.2-505 of the *Code of Virginia*.

Issues Presented

You ask whether a local school board may charge a fee for the transportation of a student who voluntarily enrolls in a nonrequired specialty program located outside the boundaries of the student's "base school."¹ You also ask whether a school board may charge a transportation fee for a majority of its specialty programs and provide free transportation for certain select programs.

Response

It is my opinion that a local school board may not charge a fee for the transportation of a student enrolled in a specialty program located outside the boundaries of the student's base school.²

Background

You relate that Prince William County Public Schools ("PWCS") offers students the opportunity to enroll in a number of specialty programs that are located throughout the school division and in a neighboring school division. You note that these programs are voluntary and offer the standard curriculum as well as supplemental or complementary educational opportunities. For some students, the specialty program may be offered at their base school. These students rely on the ordinary means of school transportation. You note, however, that some students attend specialty programs at locations outside the boundaries of their base schools. You relate that PWCS provides free transportation for these students via a network of express bus stops. You note, however, that parents are responsible for a student's transportation between home and the express stop.

As a result of budget considerations, you state that PWCS plans to discontinue free transportation to all but three specialty programs, including the Governor's School in Fairfax County. You note that if

¹For purposes of this opinion, a "base school" is a school within which designated school boundaries a student resides.

²Because I answer your first inquiry in the negative, there is no need to address your second question.

PWCS discontinues the free transportation to the Governor's School, the number of PWCS students who attend the program would decrease due to the travel distance involved.

You state that PWCS proposes to continue free transportation to certain traditional programs offered to students across the county. You relate that should such free transportation be discontinued, a number of consequences would follow: (1) the closing or repurposing of the buildings; (2) staff transfers or layoffs; and (3) the absorption of students into their base schools, possibly resulting in overcrowding.

Applicable Law and Discussion

The Constitution of Virginia mandates that the General Assembly "provide for a system of free public elementary and secondary schools for all children of school age throughout the Commonwealth."³ In response, the General Assembly has provided that "[t]he public schools in each school division shall be free to each person of school age who resides within the school division."⁴ Further, local school boards are not permitted to levy fees or charges on any pupil except as provided in Title 22.1 or by regulation of the State Board of Education ("State Board").⁵

Section 22.1-176(A) authorizes local school boards to provide transportation for the pupils they serve, but does not expressly require such transportation, except in one instance. Section 22.1-221(A) requires school boards to provide free transportation to students with disabilities so they may "obtain the benefit of educational programs and opportunities."

Although the transportation of pupils (other than students with disabilities) is optional, the General Assembly has authorized school boards to charge fees for such transportation in only one circumstance:

When a school board provides transportation to pupils for extracurricular activities, other than those covered by an activity fund, which are sponsored by the pupils' school apart from the regular instructional program and which the pupils are not required to attend or participate in, the school board may accept contributions for such transportation or charge each pupil utilizing such transportation a reasonable fee not to exceed his pro rata share of the cost of providing such transportation.^[6]

The General Assembly has not defined the term, "extracurricular"; therefore, it must be given its ordinary meaning.⁷ "Extracurricular" means "outside a regular curriculum : not falling within the scope of a regular curriculum ... connected with the students' school and usu. carrying no academic credit."⁸ This definition is consistent with the meaning ascribed to it by the State Board of Education.⁹ Although

³VA. CONST. art. VIII, § 1.

⁴VA. CODE ANN. § 22.1-3(A) (2006).

⁵See § 22.1-6 (2006).

⁶Section 22.1-176(B).

⁷See *Sansom v. Bd. of Supvrs.*, 257 Va. 589, 594-95, 514 S.E.2d 345, 349 (1999); *Commonwealth v. Orange-Madison Coop. Farm Serv.*, 220 Va. 655, 658, 261 S.E.2d 532, 533-34 (1980).

⁸WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY OF THE ENGLISH LANGUAGE UNABRIDGED 806 (1993).

⁹See, e.g., 8 VA. ADMIN. CODE 20-131-200(A) (Supp. 2009) ("Extracurricular activities must be organized to avoid interrupting the instructional program. Extracurricular activities shall not be permitted to interfere with the student's required instructional activities.").

the specialty programs you describe offer supplemental or complementary educational opportunities, I assume that such program opportunities are interwoven with the standard mandatory curriculum and are not separate, optional components that augment a student's instructional day or diploma requirements. In addition, although enrollment in the specialty program is optional, a student participating in the program is subject to the Commonwealth's compulsory attendance laws.¹⁰ As such, the educational opportunities may not be characterized as "extracurricular" such that the school board may charge a fee for transportation. Accordingly, it is my opinion that § 22.1-176 does not authorize a local school board to charge a transportation fee for a student enrolled in a specialty program.¹¹

Local school boards may charge fees in accordance with regulations of the State Board.¹² The State Board has authorized fees for "voluntary student activities" and provides that a local school board is not prohibited "from making supplies, services, or materials available to pupils at cost. Nor is it a violation to make a charge for a field trip or an educational related program that is not a required activity."¹³ A prior opinion of the Attorney General has examined whether transportation to and from school might be a "service" for which school boards could charge and concluded that bus transportation to and from school is not a "service" within the meaning of the regulation.¹⁴

Conclusion

Accordingly, it is my opinion that a local school board may not charge a fee for the transportation of students enrolled in a specialty program located outside the boundaries of the student's base school.¹⁵

With kindest regards, I am

Very truly yours,



Kenneth T. Cuccinelli, II
Attorney General

6:060; 1:941/10-016

¹⁰ See § 22.1-254(A) (2006).

¹¹ See 1987-1988 Op. Va. Att'y Gen. 337, 338 (concluding that there is no requirement that school division provide tuition and transportation for students attending "magnet" school). Tuition and transportation matters are reserved to the cooperative agreement of the participating divisions. *Id.* Participating school divisions may, absent an agreement to the contrary, decide to enroll and pay for fewer than the number of students for whom slots are available or withdraw from the 'magnet' program before its students complete the program. *Id.*

¹² See *supra* note 5 and accompanying text.

¹³ 8 VA. ADMIN. CODE § 20-370-10 (2002).

¹⁴ See 2007 Op. Va. Att'y Gen. 82, 84 (interpreting § 22.1-176 and 8 VAC § 20-370-10).

¹⁵ See *supra* note 2.