



# COMMONWEALTH of VIRGINIA

Office of the Attorney General

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The Honorable David W. Marsden  
Member, Senate of Virginia  
Post Office Box 10889  
Burke, Virginia 22009

Dear Senator Marsden:

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

## Issue Presented

You ask whether a local school board may impose a mandatory charge for students taking advanced placement courses.

## Response

It is my opinion that a local school board cannot impose a mandatory fee on students taking advanced placement courses for the required taking of the Advanced Placement Examination.

## Background

You relate that Fairfax County Public Schools ("FCPS") offers students the opportunity to enroll in advanced placement classes. Such courses are commonly offered in high schools, and prepare students to take the nationally-administered Advanced Placement Examination. Many colleges permit students achieving sufficiently high scores on the Advanced Placement Examination to satisfy certain curriculum requirements toward their college degrees.

The FCPS requires that students enrolled in advanced placement classes take the Advanced Placement Examination as the end-of-course testing. The College Board, the not-for-profit organization that administers the examination, charges a fee to take the examination. At present the standard fee is \$87, although the actual fee may be higher or lower, as where the examination is given outside the United States, or a student demonstrates a financial need.<sup>1</sup> FCPS charges \$75 to students taking the advanced placement course to cover the cost of the Advanced Placement Examination.

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<sup>1</sup> [http://www.collegeboard.com/student/testing/ap/cal\\_fees.html](http://www.collegeboard.com/student/testing/ap/cal_fees.html) (accessed January 3, 2011).

### Applicable Law and Discussion

The Constitution of Virginia directs the General Assembly to “provide for a system of free public elementary and secondary schools for all children of school age throughout the Commonwealth.”<sup>2</sup> In response, the General Assembly has directed that “[t]he public schools in each school division shall be free to each person of school age who resides within the school division.”<sup>3</sup> The legislature further has directed that local school boards are not permitted to levy fees or charge any pupil, except as provided in Title 22.1, or by regulation of the State Board of Education.<sup>4</sup>

No statute authorizes a local school board to impose fees for the taking of tests. According to materials submitted with your request, FCPS asserts that § 22.1-253.13:1(D)(10) authorizes the fees it imposes. That section requires local school boards to implement “[a] plan to notify students and their parents of the availability of dual enrollment and advanced placement classes, the International Baccalaureate Program, and Academic Year Governor’s School Programs, the qualifications for enrolling in such classes and programs, and the availability of financial assistance to low-income and needy students to take the advanced placement and International Baccalaureate examinations.” It is my opinion that this statute does not provide a local school board with the authority to impose a fee for an advanced placement course or examination, but simply directs the board to provide information on financial assistance available to those wishing to take such examinations.

I note that it is not necessary to take an advanced placement course to take an advanced placement test.<sup>5</sup> Therefore, a logical reading of this section is that a low income student who did not take the AP course can receive financial assistance for taking an AP test that is not part of a class.

The regulations of the Board of Education prohibit fees or charges unless authorized by the Board.<sup>6</sup> The express purposes for which fees may be charged do not include examinations or classes (other than summer school or postgraduate courses).<sup>7</sup> The regulations also provide:

Nothing in this chapter shall be construed to prohibit the school board of any county, city, or town 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.<sup>8</sup>

Because the Advanced Placement Examination test is the required end-of-course examination, it cannot reasonably be viewed as a service or program for which a fee may be levied. This view is consistent with prior Opinions of this Office.<sup>9</sup>

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<sup>2</sup> VA. CONST. art. VIII, § 1.

<sup>3</sup> VA. CODE ANN. § 22.1-3(A) (2006).

<sup>4</sup> Section 22.1-6 (2006).

<sup>5</sup> See [http://www.collegeboard.com/student/testing/ap/about\\_faq.html](http://www.collegeboard.com/student/testing/ap/about_faq.html). With respect to the International Baccalaureate program, which does require a student to take the course as a prerequisite to taking the tests, a low income student may have expenses associated with testing such as tutoring, or practice test books.

<sup>6</sup> 8 VA. ADMIN. CODE § 20-370-10.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> See, e.g., 2010 Op. Va. Att’y Gen. 10-014 (no authority to charge fee for the transportation of a student voluntarily enrolled in a specialty program outside the boundaries of the student’s base school); 2007 Op. Va. Att’y Gen. 82 (transportation to and from school not a “service” within meaning of the regulation).

Given the absence of express authority to charge a fee for taking an advanced placement test, and the general principle that an elementary and secondary public education is to be free except in limited and delineated circumstances, I conclude that an Advanced Test Placement Examination fee cannot be charged to students who are taking an advanced placement course.

**Conclusion**

Accordingly, it is my opinion that a local school board cannot impose a mandatory fee on students taking advanced placement courses for the required taking of the Advanced Placement Examination.

With kindest regards, I am

Very truly yours,

A handwritten signature in black ink that reads "Ken C II". The signature is stylized, with the first name "Ken" and the last name "C" being the most prominent parts, followed by "II".

Kenneth R. Cuccinelli, II  
Attorney General