

Petition for Rulemaking

I. Authority

[Va. Code § 2.2-4007](#) authorizes any person to petition an agency to develop a new regulation.

[Va. Code § 22.1-8](#) vests general supervision of the public school system in the Board of Education (the "Board"). [Va. Code § 22.1-16](#) authorizes the Board to promulgate regulations as may be necessary to carry out its powers and duties and the provisions of Title 22.1 of the Code of Virginia. [Va. Code § 22.1-269](#) requires the Board to enforce Virginia's compulsory school attendance statutes.

II. Nature of the Problem

[Va. Code § 22.1-258](#) requires each school division (through an attendance officer or, where there is none, through the superintendent) to create an attendance plan for any student with five unexcused absences and to schedule a conference with the parents after the sixth absence. The law does not merely permit the plan and conference; it says the school "shall" create the plan and schedule the conference. The statute continues:

The conference shall be held no later than fifteen school days after the sixth absence. Upon the next absence by such pupil without indication to the attendance officer that the pupil's [parent is aware of and supports the pupil's absence](#), the school principal or his designee shall notify the attendance officer or the division superintendent, as the case may be, who shall enforce the provisions of this article by either or both of the following: (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 or (ii) instituting proceedings against the parent pursuant to § 18.2-371 or § 22.1-262. [emphasis and link to the Attorney General's opinion supplied]

That is, if the student continues to be truant, the school is required to file a CHINS petition and/or to initiate proceedings against the parents.

Unfortunately, the information collected by the Virginia Department of Education (the "Department") does not permit the Department, the Board, or the public to assess a school division's compliance with § 22.1-258 and does not provide the Board with information sufficient to discharge its duty to enforce that statute.

The Department's [current data collection](#) provides the raw number of unexcused absences for each student and an indicator whether a truancy conference has been scheduled. The Department [reports to the public](#) only the number of truancy conferences scheduled in a particular division. The Department does not appear to collect, and certainly does not report to the public, any information about whether a school division has created the required attendance plans, conducted the required conferences, or enforced the statute in cases of truancy following a conference.

In this information vacuum, the Board already has made at least two inappropriate decisions. When one of us demonstrated the gross failure of Richmond Public Schools to conduct the required conferences and to initiate proceedings following the seventh truancy, the Board nonetheless [disdained](#) to abate those violations of § 22.1-258. Later, the State Superintendent and the President of the Board [held a private meeting with Richmond](#), destroyed a public record in violation of Virginia law, and decided -- on partial and one-sided information that nonetheless admitted ongoing violations of § 22.1-258 -- to continue to ignore their duty to enforce the truancy law as to Richmond.

The Board made those unfortunate decisions without the benefit of complete information about Richmond's (non)compliance with § 22.1-258. The Board will continue to be unable to make informed decisions until it collects more data. Moreover, the Board's ongoing failure to collect and publish the relevant information makes it impossible for the public to exercise [its right](#) to be aware of governmental activities and witness the operations of government, both as to local school boards and as to the Board. In particular, this dearth of information makes it impossible for [the Governor](#) and the public to know whether or not the members of the Board are adhering to their [oaths](#) to faithfully discharge all the duties incumbent upon them.

III. Petition

The Board should adopt a regulation requiring each school division to report at the end of each fiscal year:

- The number of students with five or more unexcused absences;
- The number of those students for whom a plan has been developed to resolve the student's nonattendance;
- The number of students for whom a conference is required to be scheduled;
- The number of conferences so scheduled;
- The number of conferences held;
- The number of students with one or more unexcused absences following a conference; and

- The number of those students for whom the division has instituted proceedings as required by § 22.1-258 and a summary of the outcomes of those enforcement proceedings.

The Board should further require the Department to publish these data on its Web site.

John R. Butcher
Carol A.O. Wolf