

## ADMINISTRATION

### Outside Legal Counsel

#### A. Employment of Outside Counsel

##### 1. Authority to Employ Outside Legal Counsel

- a. The School Board shall determine whether it is necessary and/or advisable that outside legal counsel (hereinafter "outside counsel" ) be employed to represent: i) the School Board; ii) an individual School Board Member; iii) the Superintendent; or iv) any School Division official; and only the School Board, or its duly authorized designee, shall be authorized to employ such counsel. Unless otherwise specifically directed by the School Board at the first meeting in July of each year or as otherwise specified, the School Board's duly authorized designee for legal matters shall be its in-house legal counsel. Under no circumstance shall outside counsel be employed unless the School Board or Chairman has given prior approval of such employment.
- b. If an individual School Board Member or official desires to be represented by legal counsel pursuant to Virginia Code § 22.1-82, the School Board Member or official shall not directly employ such counsel, but shall request the School Board to employ such counsel on his or her behalf. If the School Board does not authorize employment on behalf of the School Board Member or official, and legal representation is not provided under a School Board insurance policy, the School Board Member or official will be responsible for the employment and costs for retaining legal counsel.
- c. Notwithstanding the above, the Superintendent may employ outside counsel to represent the School Administration on employee grievances. Prior to employing such counsel, the Superintendent must: i) seek the advice and recommendations of the School Board's legal counsel concerning the specific attorney or law firm whose services should be employed; ii) consider the selection criteria set forth in subsection A(2) below; and iii) notify the School Board Chairman of his or her intent to employ such counsel. Additionally, the Superintendent must obtain the approval of the School Board prior to expending funds in excess of \$7,500 for outside legal counsel on any given employee grievance.

- d. Prior to the employment of outside counsel pursuant to paragraph A(1)(a), (b) or (c) above, the School Board, its duly authorized designee, or the Superintendent, as applicable, shall contact the Department of Budget and Finance to determine whether sufficient funds are available for such employment.

## 2. Selection Criteria

In determining which outside counsel should be employed, the following criteria shall be considered:

- a. The attorney's or law firm's ability, reputation and experience in the area of the legal services involved;
- b. The cost of legal services to be provided;
- c. Whether the attorney or firm has an office(s), or the attorney principally resides, in the South Hampton Roads area (i.e., the cities of Virginia Beach, Chesapeake, Norfolk, Portsmouth, and Suffolk). (It is the intent of the School Board that outside counsel will be employed from the South Hampton Roads area unless it determines, based upon the facts of a specific matter, that the employment of such counsel from out of the area would be in the best interest of the School Board and the School Division);
- d. Whether the attorney or firm currently represents, or has previously represented, a third party in legal action against the School Board or the City;
- e. Whether the attorney or firm currently has, or has previously had, any other type of involvement or connection with a third party who is, or has been, engaged in an adversarial relationship with the School Board or the City;
- f. Whether the attorney or firm is currently providing, or has previously provided, satisfactory services to the School Board or the City; and
- g. Whether the attorney is a member of the immediate family of a School Board Member, a City Council Member, the Superintendent, or a School Division administrator or employee, or whether the firm or the attorney employs a School Board Member, a City Council Member, the Superintendent, a School Division administrator or employee, or a member of any such individual's immediate family. A "member of the immediate family" shall be deemed to include a spouse, son, daughter, stepson, stepdaughter, father, mother, stepfather, stepmother, grandfather, grandmother, sister, brother, stepsister, stepbrother, aunt, uncle, son-in-law, daughter-in-law, father-in-law, mother-in-law,

sister-in-law or brother-in-law. (It is the intent of the School Board not to employ outside counsel having a relationship as described herein unless it determines, based upon the facts of a specific matter, that the employment of such counsel would be in the best interest of the School Board and the School Division.)

3. Direction and Reporting

- a. Outside counsel shall work at the direction of the School Board, or the School Board's duly authorized designee. The School Board's duly authorized designee is authorized to agree to settlement, mediation, reconciliation or resolution terms for specific matters which do not amount to more than \$20,000 in settlement and costs for a specific matter and for which the School Board has been previously informed of the nature of the claim and authorized settlement as deemed appropriate under the circumstances.
- b. Outside counsel shall report directly to the School Board through its Chairman, or through the School Board's duly authorized designee; provided, however, that if outside counsel has been employed by the Superintendent pursuant to subsection A(1)(b) above, or has been employed by the School Board or its duly authorized designee to directly represent the Superintendent or an individual School Board Member, such outside counsel shall report to the Superintendent or the School Board Member, as applicable. Whenever outside counsel provides a report of its activities to the School Board or the School Board's duly authorized designee, such report shall be simultaneously made available to the Superintendent unless such counsel has been employed to represent the School Board in a matter against the Superintendent, or to represent an individual School Board Member.

**B. Reimbursement of Employee Legal Expenses**

1. Employees may request that the School Board reimburse the employee the legal costs related to defending a criminal charge brought against the employee in the employee's capacity as a School Division employee as well as the legal costs to have such criminal charges expunged from the employee's criminal history record.
2. A request for reimbursement of such costs may be made after such charge is dismissed, "nolle prossed" or final verdict of "not guilty" is rendered. The employee may wait to submit a request for reimbursement until an expungement order has been issued.
3. A request for reimbursement of legal costs and/or the cost to expunge the employee's criminal record should be submitted to the Superintendent or

designee. Included with the request for reimbursement should be the following:

- a. Documentation to support that the employee was named as the defendant in a criminal case and that such criminal charges were brought against the employee in the employee's capacity as a School Division employee;
- b. The warrant, summons, indictment or other prosecution document with the charges;
- c. Documentation that: the employee was found not guilty; the charges or indictment was dismissed; the statute of limitations has expired on the charges; the charges were nolle prossed; or other evidence that the employee does not have criminal charges related to the warrant, summons or indictment;
- d. A court order expunging the employee's criminal history record of such charge(s) or indictment(s).
- e. Evidence that the employee paid the legal fees, related costs, and/or expungement costs.
- f. The Superintendent or designee or the School Board may request further documentation or evidence from the employee to support the request for reimbursement.

~~1. In those cases in which an employee retains an attorney to defend the employee in a criminal matter and seeks reimbursement of legal expenses from the School Board pursuant to Virginia Code § 22.1-83, the following shall be required of the employee before the School Board will consider exercising its discretion to pay such legal expenses:~~

- ~~a. The arrest, indictment, or other prosecution must be on a charge arising out of an act committed by the employee in the discharge of his/her duties as an employee of the School Board;~~
- ~~b. Such charge must be subsequently dismissed or a verdict of "not guilty" rendered; and~~
- ~~c. The attorney representing the employee must have contacted the School Board's legal counsel in advance of accepting the case and discussed the range of legal fees generally considered reasonable for the type of case being handled.~~

4. The Superintendent or designee will review the submitted documentation and make a written determination as to: 1) whether the charges arose out of the employee's position as a School Division employee; 2) whether the Superintendent recommends that the School Board reimburse the employee as requested.

5. The Superintendent or designee will prepare the employee's request for reimbursement with supporting documentation for inclusion on a School Board Agenda.

6. It is in the sole discretion of the School Board whether to reimburse the legal fees, related expenses and expungement costs incurred by an employee, and The School Board will not reimburse any such fees or legal expenses unless it deems them reasonable and determines that such reimbursement is in the best interest of the School Division. The School Board may consult with School Board legal counsel or the Superintendent or staff regarding the reasonableness of any such requests for reimbursement or as to other matters related to the criminal charge(s) or indictment(s) or expunge process.

2.7. The School Board may waive any portion of the procedures set forth in this Section of the Policy.

### **Legal Reference**

Code of Virginia § 22.1-82, as amended. Employment of counsel to advise or defend school boards and officials; payment of costs, expenses and liabilities; consent of governing bodies required prior to institution of proceedings.

Code of Virginia § 22.1-128, as amended. Title to school board real estate.

Code of Virginia § 22-83, as amended. Payment of employees legal fees and expenses.

Code of Virginia § 2.2-4343, as amended. Exemption from operation of chapter for certain transactions.

School Board Bylaw 1-5, as amended. Legal Counsel.

### **Related Links**

School Board [Bylaw 1-5](#)

Adopted by School Board: October 7, 1997  
Amended by School Board: December 3, 2013  
Amended by School Board: February 12, 2019  
Amended by School Board: 2020

APPROVED AS TO  
LEGAL SUFFICIENCY

  

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