

PERSONNEL

Lawsuits and Subpoenas

A. Lawsuits

1. The only persons authorized to be served suit papers on behalf of the School Board or Virginia Beach City Public Schools are the following:
 - a. The ~~Deputy City Attorney, Associate City~~School Board Attorney or designee or Assistant ("School Board Legal Counsel") located at the School Administration Building;
 - b. The Superintendent or duly authorized designee;
 - c. The School Board Clerk;
 - ~~d. The City Attorney or designee;~~
 - ~~e.~~d. Outside Legal Counsel ~~hired~~ retained to represent the School Board and
 - ~~f.~~e. The School Board ~~Chairman~~ Chairperson or a ~~Member~~ Member of the School Board.
2. Any other school employee ~~or member of the City Attorney's Office~~ whom a process server seeks to serve suit papers upon shall direct the process server to deliver the suit papers to those individuals named above, in the order listed.
3. Those who are authorized as set forth above to be served with suit papers involving a School Board matter shall do the following:
 - a. Write the date and time the document(s) were served on the copy of the suit papers retained and sign their name below the date and time.
 - b. Notify ~~the~~ the School Board ~~Attorney~~ Legal Counsel as soon as possible (no later than the next regular business day), ~~and~~ and provide ~~that the School Board~~ Attorney or designee with signed and dated copies of the documents served.
4. It is essential that the School Board ~~Attorney~~ Legal Counsel receive prompt notice and delivery of all suit papers so that the insurance carriers can be notified and/or counsel appointed in a timely fashion to protect the interests of the School Board and School Division.

B. Witness subpoenas

1. Lawsuits to which the School Board is not a party. ~~Any e~~Employees who receives a subpoena to appear in ~~his-their~~ official capacity~~ies~~ as a School Board employee should immediately inform ~~his-their~~ principal or supervisor. If the subpoena is for a lawsuit to which neither the School Board, Virginia Beach City Public Schools (VBCPS), nor the employee in ~~his-their~~ official capacity are parties, the principal or supervisor will consult with the appropriate department head as to the proper response to the subpoena.

a. The department head will determine whether ~~the~~ School Board ~~Legal Counsel~~Attorney or designee should be consulted to file a ~~M~~otion to ~~Q~~quash the subpoena. Valid reasons for seeking a motion to quash may include: less than five business days to comply with the subpoena; unavailability of the witness; out of city location to testify; hardship to the School Division caused by the employee's absence; lack of knowledge of the basis for the employee's testimony; and other relevant circumstances. If the department head feels there is a valid reason to Quash the subpoena, School Board ~~Legal Counsel~~Attorney or designee will be consulted promptly.

b. Employees subpoenaed to testify in these cases should first consult with the principal or supervisor about the employee's testimony prior to testifying.

2. Lawsuits to which the School Board is a party. ~~Any s~~School employees who ~~is~~are served a subpoena to appear in ~~his-their~~ official capacity~~ies~~ concerning a lawsuit that names the School Board, Virginia Beach City Public Schools (VBCPS) or a School Board employee as a party to the lawsuit should immediately notify the ~~legal counsel~~School Board Attorney or designee assigned to the case to represent the School Board and the School Administration or, if in doubt, notify School Board Legal Counsel. The employee served should note the time, date of service, and sign the subpoena prior to presenting it to ~~legal counsel~~the School Board Attorney or designee.

3. Subpoenas for the Superintendent. Only the Superintendent or designee ~~or the School Board Attorney or designee~~ may accept service of a subpoena for the Superintendent to appear as a witness. ~~The~~ School Board ~~Legal Counsel~~Attorney should be immediately notified of any subpoena served on the Superintendent.

4. Subpoenas for School Board Members. Only the School Board Members named or ~~their~~his designees may accept service of a subpoena for the ~~nameds~~School Board Member to appear as a witness. ~~The School Board Attorney or designee or outside legal counsel retained to represent the School Board Member in their official capacity may accept a subpoena for a School Board Member. The~~ School Board ~~Legal Counsel~~Attorney should be immediately notified of any subpoena served on a School Board Member. See School Board Bylaw 1-27. Subpoenas for former School Board Members for matters related to their official duties may be accepted by such former School Board Member or School Board Legal counsel or designee.

C. Subpoena of School Division records: ~~“subpoena duces tecum”~~

1. Subpoena of student records. Upon receipt of a subpoena for student records (a subpoena *duces tecum*), the served employee shall present the subpoena to the principal or supervisor.

- a. The principal or supervisor will determine whether the student whose records are the subject of the subpoena *duces tecum* is a current or former student.
- b. The principal or supervisor will consult with the Director of Student Support Services or designee concerning the appropriate response to the subpoena.
- c. If the student is a current student, the minor student's parent/legal guardian or the adult student shall be notified in accordance with the Family Educational Rights and Privacy Act (FERPA), that a subpoena *duces tecum* has been issued for the student's educational records and that the principal or supervisor will comply with such subpoena no later than the date of return on the subpoena unless the student or parent/legal guardian files a Motion to Quash the subpoena with the court. The School Division shall provide reasonable notice to the student's parent/legal guardian or the adult student in advance of compliance so that the parent/legal guardian or adult student may seek protective action from a court. Notice is not required if the subpoena is a federal grand jury subpoena, and the court has ordered that the existence or contents of the subpoena not be disclosed.
- d. If, prior to the return date, no court order is presented which prohibits release of the educational records, then the principal or supervisor should provide a copy of the records to the party requesting the records no later than the return date and time on the subpoena. Charges for the cost of producing the records shall be in accordance with subsection below.
- e. Records related to a former student may be released without notice to that former student. Charges for the cost of producing the records shall be in accordance with subsection below.
- f. Student educational records that are produced in compliance with a subpoena *duces tecum* should be accompanied by an authentication letter in the format determined by the Director of Student Support Services. Charges for the cost of producing the documents shall be in accordance with subsection below.
- g. Whenever possible, Virginia Code Section 8.01-390.1, as amended, which permits student records in a custody matter to be delivered to a court with a certificate of authentication by the custodian should be used to avoid diversion of school personnel.

D. Subpoena of employee/applicant records

Upon receipt of a subpoena for employee/applicant records (employment records), the subpoena *duces tecum* shall immediately be presented to the Chief Human Resources Officer or designee.

1. Subpoenas for employment records will generally be complied with if the employee/applicant whose records are released is a party to the lawsuit.
2. The Chief Human Resources Officer or designee will determine, in timely consultation with the School Board AttorneyLegal Counsel or designee, the appropriate response to a

subpoena *duces tecum* for employment records. Charges for the cost of producing the records shall be in accordance with subsection below.

E. Subpoena *duces tecum* for other School Division records

Subpoenas *duces tecum* that request production of documents other than employment or student educational records should be immediately directed to the Superintendent's Office. The Superintendent or designee will timely consult with the School Board Legal Counsel/Attorney or designee regarding the response to the subpoena. Charges for the cost of producing the records shall be in accordance with subsection ~~D4-F4~~ below.

F. General matters related to subpoena for records:

1. Service of process/Custodian of Records.

a. The custodian of student records is the principal of the school that the student attends, the principal's designee, or, in the case of former students, the Director of ~~Guidance/Student Support Services~~Records. The principal or the Director of ~~Guidance/Student Record~~Student Support Services may designate another individual to accept service ~~on his behalf~~ and respond to the subpoena.

~~2.~~ _____

~~a.b.~~ The custodian of employee/applicant records is the Chief Human Resources Officer or designee.

~~b.c.~~ Only the named person or designee should accept service of a subpoena.

~~c.d.~~ Subpoenas served at the wrong place of business (i.e. a building other than the building where the custodian of records is physically present) should not be accepted. The process server should be directed to the proper building and custodian of records.

~~e.~~ The person accepting service should sign, date the subpoena, and list the time of service on the copy of the subpoena that ~~he/she/they~~ retains.

~~3.2.~~ Return dates under five business days. Any School Board employee who is served with a subpoena duces tecum that has a return date that is less than five business days after the date of service should contact the appropriate department head to discuss the need to file a Motion to Quash the subpoena for insufficient time to respond.

~~4.3.~~ Charging for cost of producing documents. The School Division shall require payment for the cost of producing the requested document. Such costs should include the cost of mailing/delivering the documents; a cost determined by the School Administration of no more than \$..03 for black and white and \$.07 for color~~1503 per page copied~~; and any

additional, actual cost for production of pictures, tapes, or other unusual documents. A copy of the letter requesting payment should be sent with the documents to the attorney issuing the subpoena for the documents with a copy to the court and a copy should be retained by the School Division. The letter and copies should list the name of the case and docket number of the case as shown on the subpoena. If payment is not received within ten business days, the matter should be referred to the appropriate department head.

5-4. Delivery of documents. The School Division should carefully check the subpoena *duces tecum* to ascertain the location where the documents must be delivered. When possible, the party who issued the subpoena should be contacted and requested to pick up the documents from the School Division. If the party requesting the documents will not pick up the documents, the School Division should mail or otherwise deliver the documents and charge for the costs of doing so.

6-5. Documents which contain protected information. Documents which contain information regarding persons other than the parties to the lawsuit or their minor children should not be released without first consulting with the appropriate department head.

Editor's Note

See School Board Policy 5-31 Student Records and School Board Bylaw 1-27 Service of Process.

Legal Reference

Family Educational Rights and Privacy Act 20 U.S.C. § 1232 *et seq.* and 34 C.F.R. Part 99, as amended.

Code of Virginia § 22.1-287 through § 22.1-289, as amended. Limitations on access to records.

Code of Virginia § 8.01-390.1, as amended. School records as evidence.

Code of Virginia § 8.01-413.1, as amended. Certain copies of employment records or papers admissible; right of employee or his attorney to copies of such records or papers; subpoena; damages, costs and attorney's fees.

Related Links

School Board [Bylaw 1-27](#)

School Board [Policy 5-31](#)

Adopted by School Board: December 17, 2002

Scrivener's Amendments: February 9, 2014

Amended by School Board: October 18, 2016

Amended by School Board: September 12, 2023

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APPROVED AS TO
LEGAL SUFFICIENCY

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