

HB 2166 SOA Implementation Date

- 1. § 1. *That no statutes or regulations prescribing additional requirements upon which the accreditation rating of schools in the Commonwealth is based, pursuant to § [22.1-253.13:3](#) of the Code of Virginia, beyond those already in effect on July 1, 2008, shall become effective before July 1, 2010, unless such statutes or regulations are also specifically required by federal code, federal regulation, or court action. Furthermore, that no statutes or regulations prescribing additional graduation requirements, pursuant to § [22.1-253.13:4](#) of the Code of Virginia, shall become effective before July 1, 2010, unless such statutes or regulations are also specifically required by federal code, federal regulation, or court action. Furthermore, the passing rates required for full accreditation in [2010-2011](#) based on assessments administered during the [2009-2010](#) school year shall be the same passing rates required for full accreditation during the [2008-2009](#) school year.*

Academic and Career Plan

- Requires the creation of a personal “Academic and Career Plan” beginning in 7th grade. To begin with 7th graders in 2010-2011 and completed by fall of 8th grade, all middle school students must develop and maintain a personal Academic and Career Plan that includes the following minimum specific components:
 - “the student’s educational goals and program of study for high school graduation and a postsecondary career pathway based on the student’s academic and career interest.”
 - The plan must be included in the student’s academic record and must be reviewed and updated before entering the 9th and 11th grades.
 - It must be signed by the student, parent/guardian, and school official.

Discipline

- Under the “Role of the Principal,” a statement has been added requiring that parents be notified when students are “removed from class for disciplinary reasons for two or more consecutive days in whole or in part.”

Graduation and Completion Index

- Creates a “Graduation and Completion Index” used for accreditation purposes. Failure to reach the required index score on this index will prevent a school from being fully accredited even if the school meets SOL test percentages.
- Index is based on the cohort of 9th graders who enter in a given year (the formula does take into account transfers in and transfers out). At the end of four years, these students are given a point value.
 - Students who graduate on time get a point value of 100.
 - Students who receive a GED during the four years get a point value of 75.
 - Students not graduating but remaining in school after the 4th year get 70 points.
 - Students earning certificates of program completion get 25 points.
 - Students who drop out get 0 points.

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- Schools must achieve a minimum of 85 percentage points to be fully accredited. There are benchmarks for the index rating which are phased in over 5 years. The first year a school could be Provisionally Accredited or Accredited with Warning due to the index is 2010-2011 academic year (2011-2012 accreditation year)
 - Schools that meet the SOL requirements but do not meet the graduation requirements, will be labeled for accreditation purposes as “Provisionally Accredited – Graduation Rate.”

2009 General Assembly Changes

- Just a few

HB 1794 (22.1-277) Suspension

- A. Pupils may be suspended or expelled from attendance at school for sufficient cause; *however, in no cases may sufficient cause for suspensions include only instances of truancy.*

HB 1942 (22.1-212.1:1) **Single-sex education**

- Consistent with constitutional principles, a school board may establish a single-sex school or class in the school division, *if the school board makes available to pupils substantially equal coeducational schools or classes. Participation in such single-sex school or class shall not be required by the school division, and the school board shall ensure that participation by pupils in the single-sex school or class is voluntary. For the purposes of this section, participation by a pupil in a single-sex school or class is voluntary only if the school division also makes available to the pupil a substantially equal coeducational school or class.*

HB 2537 (22.1-213.1) Special education; definition of parent

- *A. "Parent," for purposes of this article and regulations promulgated thereto, means:*
 - *1. A biological or adoptive parent of a child;*
 - *2. A foster parent, even if the biological or adoptive parent's rights have not been terminated, but subject to subsection B;*
 - *3. A guardian generally authorized to act as the child's parent, or authorized to make educational decisions for the child (but not the Commonwealth if the child is a ward of the Commonwealth);*

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- *4. An individual acting in the place of a biological or adoptive parent (including grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child's welfare; or*
 - *5. If no party qualified under subdivisions 1 through 4 can be identified, or those parties are unwilling to act as parent, a surrogate parent who has been appointed in accordance with 8 VAC 20-80-80.*

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- *B. The biological or adoptive parent, when attempting to act as the parent pursuant to this section and when more than one party is qualified under subsection A to act as a parent, must be presumed to be the parent for purposes of this section unless the biological or adoptive parent has had their residual parental rights and responsibilities terminated pursuant to § 16.1-277.01, 16.1-277.02, or 16.1-283 or a comparable law in another state.*

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- *C. The local school division shall provide written notice to the biological or adoptive parents at their last known address that a foster parent is acting as the parent pursuant to this section, and the local school division is entitled to rely upon the actions of the foster parent pursuant to this section until such time that the biological or adoptive parent attempts to act as the parent.*

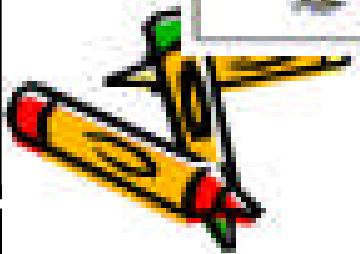
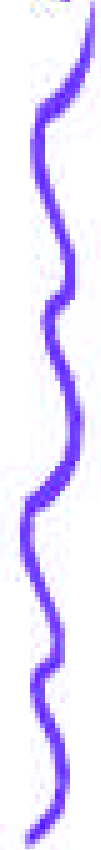
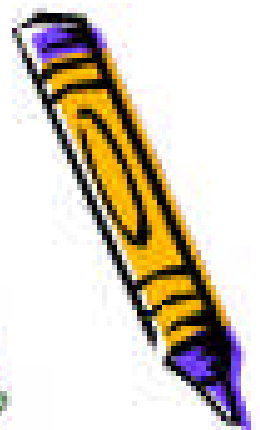
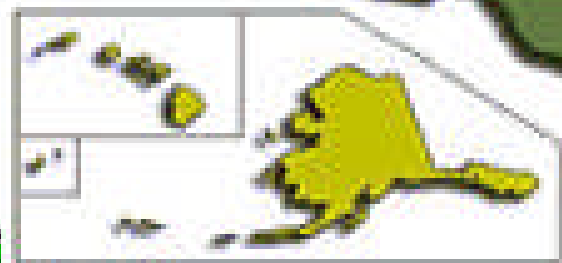
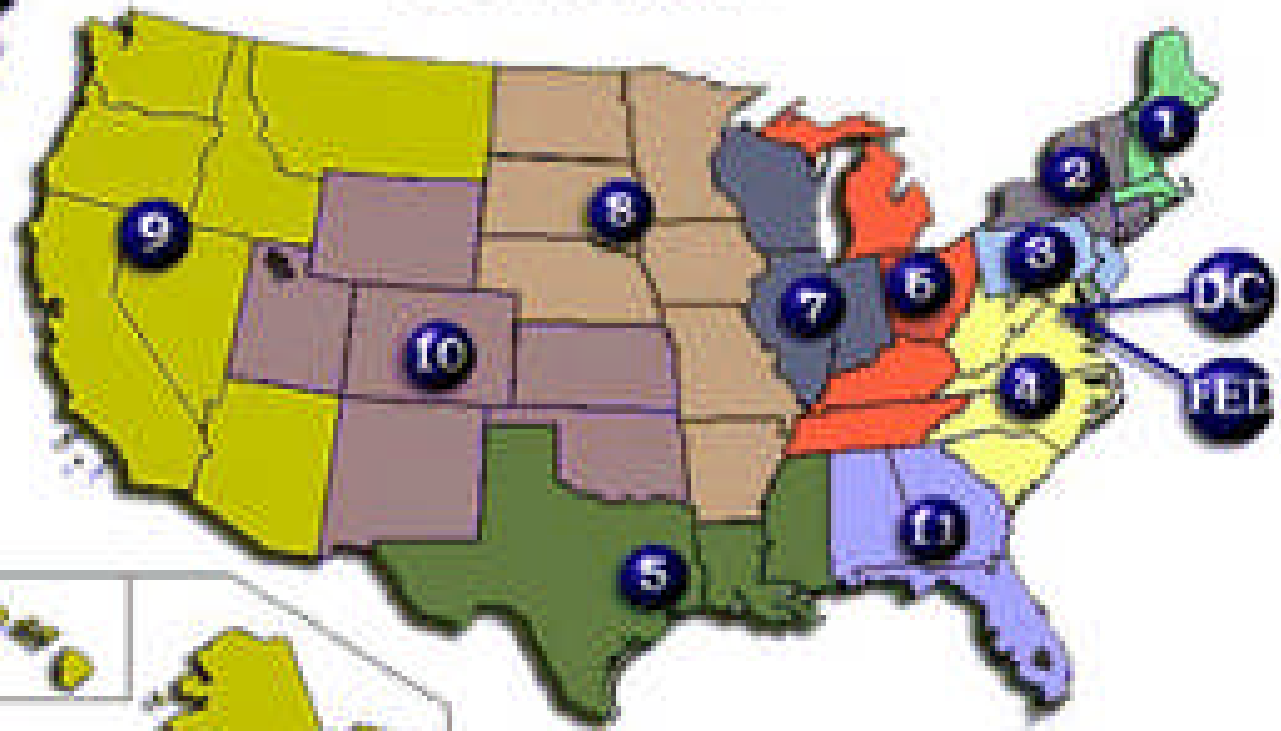
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- *D. If a judicial decree or order identifies a specific person or persons among subdivisions A 1 through A 5 to act as the "parent" of a child or to make educational decisions on behalf of a child, then such person or persons shall be determined to be the "parent" for purposes of the special education identification, evaluation, and placement of a child and the provision of a free appropriate public education to a child.*
 - *E. The Board of Education shall revise the regulations governing the provision of special education services in accordance with this section.*

Cyberbullying: An Update

2009 General Assembly

- **HB 1624 (22.1-279.6) Board of Education model policy; bullying, harassment, or intimidation.** Provides that the Board of Education must include in its guidelines and model policies for codes of student conduct standards for school board policies, on the use of electronic means for purposes of bullying, harassment, and intimidation.

Court Links



Layshock (PA, 2007)

- Justin Layshock, a senior, developed an unflattering mock myspace profile of the principal (Eric Trosch) stating that he used drugs, kept a beer keg behind his desk, was a big steroid user, and a big whore
- Layshock used his grandmother's computer after school to create profile which did include a "cut and paste" picture of Trosch from school website
- Layshock opened the profile in a Spanish classroom during school and showed the profile to others (no school official knew this)

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- There were three other unflattering profiles of the principal online at the same time
 - Minimal disruption in school
 - Suspended 10 days, placed in alternative education

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- Layshock v. Hermitage School District is currently before the 3rd Circuit

J.S. v. Blue Mountain School District (PA, 2008)

- Student created a fake My Space profile of the principal but did not identify him by name but did state that he was the principal of the school
- Included a photograph of him from the school's website
- Identified "himself" as a pedophile and sex addict and said his interest were "f***ing in my office, hitting on students and their parents"
- Word of website at school created a "buzz"

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- Student suspended 10 days for
 - Making false accusations against school staff members which violated discipline code and
 - Violating the AUP which states that students cannot use copyrighted material without permission

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- J.S. v. Blue Mountain School District is currently before the 3rd Circuit

Most Recent Case 12/2008

- Senior created Facebook page at home
- Posted picture of her AP English teacher
- “The worst teacher I’ve ever met.”
- No profanity, no threats
- Solicited comments
- Received 3 comments – all berating the student and supporting the teacher

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- Principal suspended student for 3 days and forced her into a non-AP class
 - Cited “Bullying/Cyber Bullying Harassment toward a staff member” and “Disruptive Behavior”

California Passes Cyberbullying Law

- California has joined the growing number of states that have passed laws against cyberbullying.
- *Washington Post* report that, as of January 1, 2009 officials in California schools may suspend or expel students who harass their peers through cyberbullying but only for on-campus behavior
- Anti-cyberbullying laws passed in other states call on school districts to develop policies regarding cyberbullying detection and punishment.

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- Other states with cyberbullying laws include: Arkansas, Delaware, Idaho, Iowa, Michigan, Minnesota, Nebraska, New Jersey, Oklahoma, Oregon, South Carolina, and Washington.
 - According to a 2006 National Crime Prevention Council study, 40% of teens surveyed had experienced some form of cyberbullying in their lifetime.
 - The study also found cyberbullying to be most common among females and adolescents who are 15 and 16 years old.

National Issues on Important Topics

Parents sue Texas district over sex offender check system

- Parents of an elementary school student have filed suit against Lake Travis school district over a computer system (Raptor Software) that checks visitors against a sex offender database by scanning their driver's license.
- The parents say the computerized checks violate their constitutional rights, including freedom to associate with their children at school and freedom from unreasonable search and seizure.
- Neither of the parents is listed in the national sex offender database.

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- **Alabama to require high school students to take distance learning course to graduate**

New Florida law requires districts to create full-time virtual schools

- **Florida has enacted a new state law requiring districts to create their own full-time virtual schools, collaborate with other districts, or contract with providers approved by the state, the *Palm Beach Post* reports.**
- **The law is believed to be the most wide-ranging virtual mandate in the nation.**

Search and Seizure

- Searches are legal if they are reasonable under the circumstances (N.J. v. T.L.O.)
- Reasonable suspicion
 - Schools grounds
 - Personal property
 - Lockers
 - Cars
 - Metal detectors
 - Drug testing
 - Sweep searches

- Vernonia v. Acton

- Allows random drug testing of student athletes

- Board of Education of Pottawatomie County v. Earls

- Allows random drug testing of students representing the school in competitive extra curricular activities

Stafford School District v. Redding (Recent decision)

- Concerned the strip search of a middle school female student
- Allowed the Supreme Court to re-look at the reasonable suspicion doctrine

The Facts of the Case

- Parent complains that her son was given pills by a classmate and got sick
- Assistant principal finds a planner, knife, cigarette, lighter and ibuprofen on a girl named Marissa
- Marissa tells AP that the items were given to her by Savana Redding
- AP goes to math class, gets Savana

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- Upon entering AP's office, Savana is lectured on the importance of telling the truth
 - AP asks her if she recognizes any of the items on his desk
 - She says "yes," that the planner is hers and she loaned it to another student (the one who turned her in)
 - AP asks if she recognizes other items including the ibuprofen

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- Savana says “no”
 - AP ask Savana to consent to a search
 - Savana agrees to be searched
 - Nothing is found
 - AP directs two females to take Savana and do a more thorough search- told to pull her bra to the side and shake it, exposing her breasts and told to pull her underwear and shake it
 - Nothing was found

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- School division and AP sued
 - District judge threw the case out
 - 3-judge panel of the 9th Circuit agreed with the district court judge because they ruled that school officials had reason to believe that Savana was violating state law or, at least, school board policy
 - Appealed and asked the full Circuit to review.

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- Majority ruled that search was illegal and that the district and the AP were liable.
 - Superintendent stated he was “grateful” for the opportunity to make their case before the Supreme Court

Supreme Court Decision (6/25/09)

- Thanks to D. Patrick Lacy, Jr. Partner in the law firm of ReedSmith (School Law Alert, June 2009)
- Relied on *N.J. v. T.L.O.* that search must be based on reasonable suspicion
- Also, search must be “reasonably related in scope to the circumstances which justified the interference in the first place”
- Search must not be “excessively intrusive in light of the age and sex of the student and the nature of the infraction”

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- Court ruled the search of Redding's backpack, outer clothing, removing jacket, shoes, and socks was not excessively intrusive
 - But, ruled that requiring her to remove pants and t-shirt and pull out bra and underwear was unreasonable and violated of 4th amendment

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- Court did not state that strip searches were categorically illegal but they required a higher standard
 - “In sum, what was missing from the suspected facts that pointed to Savana was any indication of danger to the students from the power of the drugs or their quantify, and any reason to suppose that Savana was carrying pills in her underwear. We think that the combination of these deficiencies was fatal to finding the search reasonable.”

Policies Prohibiting Drugs

- Court upheld the school district's strict ban on all drugs, including legal prescription and non-prescription drugs without prior permission.
- Noted that “standards of conduct for schools are for school administrators to determine without second-guessing by courts lacking the experience to appreciate what may be needed.”

Qualified Immunity

- Even though the strip search violated the 4th amendment, the court ruled that school officials are entitled to qualified immunity and are not liable because there was reasonable suspicion for the search and courts were unclear about strip searches
- Now that standard is set, qualified immunity may not exist in the future

Recent Supreme Court Decision Fitzgerald v. Barnstable School Committee

- Case involved sexual harassment of a kindergarten child by an older child on a bus
- Title IX consequence is withholding federal funds and school division liability
- Section 1983 allows a plaintiff to sue a public official who, acting under color of state law, violates rights secured by the federal constitution or statutes..

Section 1983 states:

- Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

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- The Court concluded that Title IX was not meant to be an exclusive mechanism for addressing gender discrimination in schools, nor a substitute for §1983 suits as a means of enforcing constitutional rights
 - Individuals (superintendents and principals) can be held personally liable for monetary damages under §1983 when school districts are sued successfully under Title IX