



# COMMONWEALTH OF VIRGINIA

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April 20, 2010

The Honorable G. Manoli Loupassi  
Member, House of Delegates  
6002-A West Broad Street, Suite 200  
Richmond, Virginia 23230

Dear Delegate Loupassi:

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 inquire whether a specific provision of the charter agreement between the School Board of the City of Richmond and the Patrick Henry School of Science and Arts violates § 22.1-212.14(D). You also ask whether § 22.1-212.14 prohibits the School Board from allocating less funding per student attending the charter school than for other schools in the division.

## **Response**

It is my opinion that the provision of the charter agreement between the School Board of the City of Richmond and the Patrick Henry School of Science and Arts about which you inquire does not conflict with § 22.1-212.14(D). With respect to your second inquiry, I lack the factual background necessary to determine whether a disparity in funding exists and, if so, whether it would constitute an impermissible disincentive.

## **Background**

You provide a copy of the agreement between the School Board of the City of Richmond (“School Board”) and the Patrick Henry School of Science and Arts (“Patrick Henry”) dated October 6, 2008 (“Agreement”), for a public charter school. You relate that the Agreement requires that certain “start-up” costs be paid out of private funds raised by Patrick Henry and not from the per-student state and local funding allocated to Patrick Henry by the School Board. Further, you indicate that the School Board intends to fund Patrick Henry on a per-student allocation that is less than that provided to other schools in the division. Therefore, you inquire whether the Agreement and the per-student allocation would violate § 22.1-212.14.

## **Applicable Law and Discussion**

Article 2, § D of the Agreement (“§ D”) requires Patrick Henry to

operate on a financially sound basis under applicable state law, School Board policy, and this Charter Agreement. [Patrick Henry] submitted a detailed budget for school years

2009-2010, 2010-2011, and 2011-2012, which now appears as Appendix E to its supplemented application and which was based on [Patrick Henry] opening for operation on July 27, 2009. Other than startup costs for the library and media center, the principal's first six months of salary, furnishings, and any identified capital needs, [Patrick Henry] represents that it can operate the school on the state and local funds requested. Funds to cover the start-up costs and for the intended ADA renovations will be derived through tax-deductible contributions as described in the Budget Narrative of the supplemented application. The School Board and/or Richmond Public Schools shall not assume any responsibility for financial liabilities incurred by [Patrick Henry] in excess of budgeted revenues and/or donations received.

Article 1.2, Chapter 13 of Title 22.1, §§ 22.1-212.5 through 22.1-212.16 governs the establishment of charter schools. Section 22.1-212.14(D) provides, in relevant part, that “[f]unding and service agreements between local school boards and public charter schools shall not provide a financial incentive or constitute a financial disincentive to the establishment of a public charter school, including any regional public charter school.” A prior opinion of the Attorney General noted that:

The prohibition in § 22.1-212.14(D) is narrow and prohibits a financial “disincentive” in the “funding and service agreements” between a local school board and a public charter school. Therefore, even if [a term of the agreement between a local school board and a charter school] is a financial impediment or is financially disadvantageous in some way, if this requirement does not relate to the “funding or service agreements,” it is not prohibited by § 22.1-212.14(D).<sup>[1]</sup>

Thus, if the term of the Agreement addressing start-up costs does not relate to “funding or service agreements,” it is not prohibited by § 22.1-212.14(D).

Section 22.1-212.14(C) provides guidance regarding matters that are “services” for purposes of charter school funding:

Services provided in the public charter school by the local school board or the relevant school boards, in the case of regional public charter schools, may include food services; custodial and maintenance services; curriculum, media, and library services; warehousing and merchandising; and such other services not prohibited by the provisions of [Article 1.2] or state and federal laws.

Although “*start-up costs* for the library and media center” are among the items addressed in the Agreement, these must be distinguished from “*media, and library services*.”<sup>2</sup> A funding agreement in this context does not refer to a precondition for opening the doors of the school. Rather, § 22.1-212.14(D) refers to a funding agreement between a school board and a charter school after the school has opened. In other words, the “funding agreement” refers to the ongoing operations of the school, not startup costs.<sup>3</sup>

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<sup>1</sup>2010 Op. Va. Att’y Gen. No. 10-010, \*2, available at <http://www.vaag.com/OPINIONS/2010opns/10-010-Morrissey.pdf>.

<sup>2</sup>VA. CODE ANN. § 22.1-212.14(C) (2006).

<sup>3</sup>See 2010 Op. Va. Att’y Gen., *supra* note 1, at \*2.

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Because the startup costs about which you inquire do not relate to either funding or service agreements, it is my opinion that § D of the Agreement does not violate § 22.1-212.14(D).

You also ask whether § 22.1-212.14 prohibits the School Board from providing less funding, on a per-student basis, to Patrick Henry than it does to other schools within the division. Section 22.1-212.14(F) addresses equity in per-student funding:

Notwithstanding any other provision of law, the proportionate share of state and federal resources allocated for students with disabilities and school personnel assigned to special education programs shall be directed to public charter schools enrolling such students. The proportionate share of moneys allocated under other federal or state categorical aid programs shall be directed to public charter schools serving students eligible for such aid.

Section 22.1-212.14(F) does not impose requirements upon the allocation of local funds. Certainly, equal funding per student between a charter school and other public schools within the district would satisfy the mandate that there be no financial disincentive for charter school funding agreements. It is not axiomatic, however, that a per-student funding agreement that is not exactly the same throughout the district would necessarily violate § 22.1-212.14(D). For example, there may be circumstances, such as a significant endowment for a charter school, that would justify a less than equal funding agreement. Conversely, additional funding for a charter school would not necessarily violate the statute. I do not, however, have sufficient facts to determine whether a disparity in funding exists at Patrick Henry or, if it does, whether the disparity would constitute a “disincentive” in a funding agreement.

### **Conclusion**

Accordingly, it is my opinion that the provision of the charter agreement between the School Board of the City of Richmond and the Patrick Henry School of Science and Arts about which you inquire does not conflict with § 22.1-212.14(D). With respect to your second inquiry, I lack the factual background necessary to determine whether a disparity in funding exists and, if so, whether it would constitute an impermissible disincentive.

With kindest regards, I am

Very truly yours,

A handwritten signature in black ink, appearing to read 'Ken C II', with a horizontal line underneath the 'II'.

Kenneth T. Cuccinelli, II  
Attorney General