



COMMONWEALTH of VIRGINIA

Office of the Attorney General

Richmond 23219

Jerry W. Kilgore
Attorney General

900 East Main Street
Richmond, Virginia 23219
804 - 786 - 2071
804 - 371 - 8946 TDD

October 15, 2003

The Honorable Kevin G. Miller
Member, Senate of Virginia
737 East Market Street, Suite A
Harrisonburg, Virginia 22801

Dear Senator Miller:

I am responding to your request for an official advisory opinion in accordance with § 2.2-505 of the *Code of Virginia*.

Issues Presented

You ask whether a school board has authority to discipline a student whose action is in conformance with the language of Chapter 619 of the 2003 Acts of Assembly, which amends § 18.2-308.1(B) pertaining to the possession of an unloaded firearm.

Response

It is my opinion that a school board has authority to discipline, in the context of the complete analysis of this opinion, a student whose action is in conformance with the language of Chapter 619 of the 2003 Acts of Assembly (the "2003 amendment"), which amends and reenacts § 18.2-308.1(B), pertaining to the possession of an unloaded firearm in a locked vehicle trunk.

Applicable Law and Discussion

Section 18.2-308.1(A) provides that any person possessing a stun weapon or other weapon on school property "shall be guilty of a Class 1 misdemeanor."¹ The first paragraph of § 18.2-308.1(B) provides that any person who possesses a firearm "shall be guilty of a Class 6 felony,"² unless the exemptions in the second paragraph apply. The 2003 Session of the General Assembly amended the second paragraph of § 18.2-308.1(B) to provide:

¹The authorized punishments for a Class 1 misdemeanor are "confinement in jail for not more than twelve months and a fine of not more than \$2,500, either or both. VA. CODE ANN. § 18.2-11(a) (LexisNexis Supp. 2003).

²The authorized punishments for a Class 6 felony are "a term of imprisonment of not less than one year nor more than five years, or in the discretion of the jury or the court trying the case without a jury, confinement in jail for not more than 12 months and a fine of not more than \$2,500, either or both." Section 18.2-10(f) (LexisNexis Supp. 2003).

The exemptions set out in § 18.2-308 shall apply, *mutatis mutandis*, to the provisions of this section. The provisions of this section shall not apply to (i) persons who possess such weapon or weapons as a part of the school's curriculum or activities, (ii) a person possessing a knife customarily used for food preparation or service and using it for such purpose, (iii) persons who possess such weapon or weapons as a part of any program sponsored or facilitated by either the school or any organization authorized by the school to conduct its programs either on or off the school premises, (iv) any law-enforcement officer while engaged in his duties as such, (v) any person who possesses a knife or blade which he uses customarily in his trade, or (vi) a person who possesses an unloaded firearm ~~which~~ *that* is in a closed container, or a knife having a metal blade, in or upon a motor vehicle, or an unloaded shotgun or rifle in a firearms rack in or upon a motor vehicle. For the purposes of this paragraph, "weapon" includes a knife having a metal blade of three inches or longer *and "closed container" includes a locked vehicle trunk.*¹

The 2003 amendment substituted "firearm that" for "firearm which"⁴ in clause (vi) of the first sentence, and added "and 'closed container' includes a locked vehicle trunk"⁵ to the end of the second sentence in § 18.2-308.1(B) quoted above. I must, therefore, conclude that your reference to "action of a student" suggests that such student possesses an unloaded firearm in a locked vehicle trunk on school property or at a school-sponsored activity.

The rules of statutory construction that govern my response to this inquiry include the well-accepted rule that statutes relating to the same subject should not be read in isolation.⁶ Such statutes should be considered *in pari materia*.⁷ Moreover, statutes dealing with the same subject matter should be construed together to achieve a harmonious result, resolving conflicts to give effect to legislative intent.⁸

Section 22.1-277.07(A) is a statutory provision on this same subject and relating to the same matter of your inquiry. The 1995 Session of the General Assembly enacted § 22.1-277.07⁹ in response to the requirements of the Gun Free Schools Act of 1994.¹⁰ Section 22.1-277.07 provides, in part:

³2003 Va. Acts chs. 976, 619, available at <http://leg1.state.va.us/cgi-bin/legp504.exe?031+ful+CHAP0976>, <http://leg1.state.va.us/cgi-bin/legp504.exe?031+ful+CHAP0619>, respectively.

⁴2003 Va. Acts ch. 976, *supra* note 3.

⁵2003 Va. Acts ch. 619, *supra* note 3.

⁶2B NORMAN J. SINGER, SUTHERLAND STATUTORY CONSTRUCTION § 51.02 (West 6th ed. 2000); Op. Va. Att'y Gen.: 1999 at 22, 22; 1998 at 19, 21; *id.* at 123, 124; 1996 at 197, 198; 1995 at 146, 147; 1993 at 135, 137; *id.* at 160, 162; 1992 at 108, 112.

⁷See *Prillaman v. Commonwealth*, 199 Va. 401, 405-06, 100 S.E.2d 4, 7-8 (1957); 2B SINGER, *supra* note 6, § 51.03 (West 6th ed. 2000); 1996 Op. Va. Att'y Gen. 134, 135. "*In pari materia*" is the Latin phrase meaning "[o]n the same subject; relating to the same matter." BLACK'S LAW DICTIONARY 794 (7th ed. 1999).

⁸See 2B SINGER, *supra* note 6, § 51.02, at 191; 2000 Op. Va. Att'y Gen. 182, 185.

⁹The 1995 Session of the General Assembly originally enacted § 22.1-277.01 (see 1995 Va. Acts ch. 724, at 1197, 1198-99; *id.* ch. 801, at 1525, 1527-28); the 2001 Session of the General Assembly repealed § 22.1-277.01 and enacted § 22.1-277.07, containing language similar to the repealed statute (see 2001 Va. Acts ch. 688, at 872, 881-82, 886; *id.* ch. 820, at 1126, 1135-36, 1140).

¹⁰20 U.S.C.A. § 7151 (West Supp. 2003).

A. In compliance with the federal Improving America's Schools Act of 1994 (Part F-Gun-Free Schools Act of 1994), a school board shall expel from school attendance for a period of not less than one year any student whom such school board has determined, in accordance with the procedures set forth in [Article 3, Chapter 14 of Title 22.1], to have brought a firearm onto school property or to a school-sponsored activity as prohibited by § 18.2-308.1, or to have brought a firearm as defined in subsection D or an air rifle or BB gun on school property or to a school-sponsored activity....

....

"*Firearm*" means any weapon prohibited on school property or at a school-sponsored activity pursuant to § 18.2-308.1, or (i) any weapon, including a starter gun, that will, or is designed or may readily be converted to, expel single or multiple projectiles by the action of an explosion of a combustible material; (ii) the frame or receiver of any such weapon; (iii) any firearm muffler or firearm silencer; or (iv) any destructive device. "Firearm" shall not include any weapon in which ammunition may be discharged by pneumatic pressure.

The interaction between §§ 18.2-308.1(B) and 22.1-277.07(A) is not a model of clarity. Section 22.1-277.07(A) directs local school boards to expel any person bringing a firearm onto school property as prohibited by § 18.2-308.1. Section 18.2-308.1 does not prohibit a person from having an unloaded firearm in a closed container, including a locked vehicle trunk, on school property. Consequently, a student who possesses an unloaded firearm in such a manner is not violating the firearm prohibition in § 22.1-277.07(A) and, therefore, is not subject to mandatory expulsion. Section 22.1-277.07(A), however, also prohibits the possession of a firearm as defined in § 22.1-277.07(D). Section 22.1-277.07(D) defines "firearm" with reference to the prohibitions in § 18.2-308.1 and further defines the term in such a way as to include firearms previously excluded by reference to § 18.2-308.1. Although trying to reconcile these circular definitions is academically challenging, the exercise does not lend itself to clearly determining what the General Assembly intended by the words it used in the two statutes.

Article VIII, § 7 of the Constitution of Virginia vests "[t]he supervision of schools in each school division ... in a school board, to be composed of members selected in the manner, for the term, possessing the qualifications, and to the number provided by law."¹¹ Section 22.1-79 details the powers and duties of a school board. Section 22.1-71 confers upon the school board "all the powers and ... duties, obligations and responsibilities imposed upon school boards by law." Furthermore, § 22.1-78 permits school boards to

adopt bylaws and regulations, not inconsistent with state statutes and regulations of the Board of Education, for its own government, for the management of its official business and for the supervision of schools, including but not limited to the proper discipline of students, including their conduct going to and returning from school.

Section 22.1-277(A) provides that "[p]upils may be suspended or expelled from attendance at school for sufficient cause."

¹¹See also VA. CODE ANN. § 22.1-28 (Michie Repl. Vol. 2000) ("The supervision of schools in each school division shall be vested in a school board selected as provided in [Chapter 5 of Title 22.1] or as otherwise provided by law.").

The 1993 Session of the General Assembly amended § 22.1-278 to require the State Board of Education to establish guidelines and develop model student conduct policies to aid local school boards with the implementation of such policies.¹² In 1994, the State Board developed and distributed to local school boards its *Student Conduct Policy Guidelines*.¹³ The State Board revised its guidelines in 2001 to update federal and state legislation affecting student conduct and safety while on school property and attending school-sponsored activities.¹⁴ The State Board guidelines contain components of a student conduct policy that are designed to provide a framework for acceptable student conduct within the educational environment.¹⁵ The philosophy statement suggested by the State Board for developing such guidelines is to encourage the healthy growth and development of each student in a learning environment that is free from conflict, threats of conflict or danger, and undue disruption.¹⁶ The State Board also recommends a policy statement for student conduct that responds to issues such as school safety and security, alcohol and other drug use, weapons possession, and other issues pertaining to meeting the educational and safety needs of all students.¹⁷

The Supreme Court of the United States acknowledges “the substantial interest of teachers and administrators in maintaining discipline in the classroom and on school grounds” in the case of *New Jersey v. T.L.O.*¹⁸ The Court specifically noted the following:

Maintaining order in the classroom has never been easy, but in recent years, school disorder has often taken particularly ugly forms: drug use and violent crime in the schools have become major social problems. Even in schools that have been spared the most severe disciplinary problems, the preservation of order and a proper educational environment requires close supervision of schoolchildren, as well as the enforcement of rules against conduct that would be perfectly permissible if undertaken by an adult. “Events calling for discipline are frequent occurrences and sometimes require immediate, effective action.” Accordingly, we have recognized that maintaining security and order in the schools requires a certain degree of flexibility in school disciplinary procedures, and we have respected the value of preserving the informality of the student-teacher relationship.¹⁹

The Supreme Court of Virginia also has had occasion to observe that school authorities may impose reasonable disciplinary measures in the absence of written regulations. The basis for this authority is found in the inherent power of school authorities to maintain order and discipline in the schools.²⁰ A

¹²1993 Va. Acts ch. 819, at 1185, 1187; *id.* ch. 856, at 1241, 1243; *id.* ch. 889, at 1343, 1345.

¹³STUDENT CONDUCT POLICY GUIDELINES (2001) (revising 1994 guidelines), available at http://www.pcn.k12.va.us/VDOE/Instruction/Sped/stu_conduct.pdf.

¹⁴*Id.* at *1.

¹⁵*Id.* at *13.

¹⁶*Id.* at *13-14.

¹⁷*Id.* at *14-15.

¹⁸469 U.S. 325, 339 (1985).

¹⁹*Id.* at 339-40 (citations omitted) (quoting *Goss v. Lopez*, 419 U.S. 565, 580 (1975)).

²⁰1975-1976 Op. Va. Att’y Gen. 303 (citing *Pleasants v. Commonwealth*, 214 Va. 646, 649, 203 S.E.2d 114, 116 (1974)).

1975 opinion of the Attorney General recognizes that a local school board has broad authority over the discipline of its students.²¹ In addition, a 1983 opinion acknowledges that, in implementing such authority, the school board may establish a code of student conduct and reasonable penalties for violating the code.²² It may empower the division superintendent to take necessary and appropriate actions to maintain discipline and order in the schools, including the penalties of expulsion and suspension.²³

For many purposes, school authorities, therefore, act *in loco parentis* with reference to the school children charged to their care for educational purposes.²⁴ In addition, school authorities in the Commonwealth have the responsibility to provide fair access to an education for every child.²⁵ A learning environment is required that encourages the growth and development of every child free from conflict, threats of conflict or danger, and undue disruption of the educational process.

As long as the regulations of the school authorities are not inconsistent with the 2003 amendment, school authorities are authorized to promulgate reasonable regulations that may result in the discipline of a student whose action is in conformance with the language of the 2003 amendment pertaining to the possession of an unloaded firearm. Section 22.1-277.07(A) authorizes, but does not require, a school board to expel a student who brings a firearm onto school property or to a school-sponsored activity as prohibited by § 18.2-308.1.²⁶

The 2003 amendment permits a student to possess a firearm that is unloaded and in a "closed container," which "includes a locked vehicle trunk," on school property or at a school-sponsored activity.²⁷ The 2003 amendment, however, does not restrict the discretion of a school board to consider discipline

²¹See 1975-1976 Op. Va. Att'y Gen., *supra* (noting that school authorities may impose reasonable disciplinary measures in absence of written regulations for purpose of maintaining order and discipline in schools); see also § 22.1-78 (Michie Repl. Vol. 2000); § 22.1-277 (LexisNexis Interim Supp. 2003); *Pleasants*, 214 Va. at 648-49, 203 S.E.2d at 116 (noting authority of school board agent to maintain order and discipline in school) The express authority to regulate student conduct lies in the sound discretion of the local school board. 1971-1972 Op. Va. Att'y Gen. 356, 357 (citing 1970-1971 Op. Va. Att'y Gen. 336).

²²1982-1983 Op. Va. Att'y Gen. 448, 449.

²³*Id.* at 449.

²⁴See, e.g., *Bethel Sch. Dist. No. 403 v. Fraser*, 478 U.S. 675, 684 (1986) (citing cases that recognize obvious concern of school authorities acting *in loco parentis* to protect children from exposure to sexually explicit or lewd speech).

²⁵See VA. CONST. art. VIII, § 1; § 22.1-3 (Michie Repl. Vol. 2000 & LexisNexis Supp. 2003) (providing for free public education for school-age children throughout Commonwealth).

²⁶"A school administrator, pursuant to school board policy, or a school board may, however, determine, based on the facts of a particular situation, that special circumstances exist and no disciplinary action or another disciplinary action or another term of expulsion is appropriate. A school board may promulgate guidelines for determining what constitutes special circumstances. In addition, a school board may, by regulation, authorize the division superintendent or his designee to conduct a preliminary review of such cases to determine whether a disciplinary action other than expulsion is appropriate. Such regulations shall ensure that, if a determination is made that another disciplinary action is appropriate, any such subsequent disciplinary action is to be taken in accordance with the procedures set forth in [Article 3, Chapter 14 of Title 22.1]." VA. CODE ANN. § 22.1-277.07(A) (LexisNexis Repl. Vol. 2003).

²⁷2003 Va. Acts chs. 976, 619, *supra* note 3 (quoting § 18.2-308.1(B)).

for such a student that includes expulsion. Section 22.1-277(A) permits a student to be expelled from school "for sufficient cause." A 1989 opinion of the Attorney General observes that local school boards have significant authority over the supervision of schools and the discipline of students.²⁶ The opinion concludes that the general authority to supervise schools and enforce student discipline authorizes school boards to adopt a policy requiring the periodic drug testing of students who seek readmission to school following their suspension or expulsion for violating school policies or state laws prohibiting the possession, consumption or distribution of controlled substances, subject to constitutional limitations.²⁹ Because of its significant authority over the supervision of schools and discipline of students, a school board may, subject to constitutional limitations, similarly adopt a policy with regard to possessing firearms on school property or at a school-sponsored activity.³⁰

A school board may not, however, have a per se rule expelling all students whose actions are in conformity with the 2003 amendment.³¹ Student conduct in conformance with the 2003 amendment, however, coupled with some other behavior, may give rise to "sufficient cause" for suspension or expulsion under § 22.1-277(A). Whether any particular conduct constitutes "sufficient cause," in addition to possessing a firearm in accordance with the 2003 amendment, is a factual determination. Such a determination requires, at a minimum, a careful consideration of the nature of the incident, a review of the individual student's disciplinary record, and a reasonable belief that the expulsion is required by a totality of the facts and circumstances surrounding such possession.³²

²⁶1989 Op. Va. Att'y Gen. 204, 204; *see also* VA. CONST. art. VIII, § 7; § 22.1-79; tit. 22.1, ch. 14, art. 3 ("Discipline").

²⁹1989 Op. Va. Att'y Gen., *supra*, at 206.

³⁰A local school board must consider the implications of any such regulations on the rights secured to citizens under the Second, Fourth, and Fourteenth Amendments to the Constitution of the United States and Article 1, § 13 of the Constitution of Virginia. Additionally, the authority to discipline a student is not absolute. In determining what regulations are "reasonable," local school authorities may not ignore the consideration specifically given by the General Assembly to students bringing an unloaded firearm in a locked vehicle onto school property (*see* § 18.2-308.1(B)). There is a distinct difference between a student preparing for an after-school hunting trip and a student who conducts himself in such a manner that school officials reasonably conclude that he might act irresponsibly or dangerously. Thus, in developing "reasonable regulations," local school authorities should consider numerous factors and the totality of the circumstances, rather than promulgating and implementing a regulation based solely on the fact that a student has an unloaded firearm in a locked vehicle trunk on school property. Failure of local school authorities to do so would be inconsistent with the language of the 2003 amendment.

³¹I note, however, that if a student possesses a firearm in such a manner that is *not* in conformance with the exceptions in § 22.1-277.07 or § 18.2-308.1, then that student is subject to the expulsion provisions of §§ 22.1-277.07(A) and 22.1-277(A).

³²I am aware that some argue that, by enacting the 2003 amendment, the General Assembly intended to allow students to possess firearms in accordance with § 18.2-308.1(B) and not be punished for doing so. If this was the intent of the General Assembly, such intent is not manifest given the required reconciliation of the statutory scheme outlined in this opinion. Had the intent of the General Assembly been to permit students to possess firearms in conformance with the 2003 amendment without any punishment, it would specifically have provided such in the 2003 amendment, or it would have amended the statutes dealing with a local school board's authority to expel or suspend students and clearly removed this authority from them. *See* Op. Va. Att'y Gen.: 2002 at 233, 237; 2001 at 28, 30; 1999 at 10, 11; 1998 at 87, 88; 1996 at 54, 55.

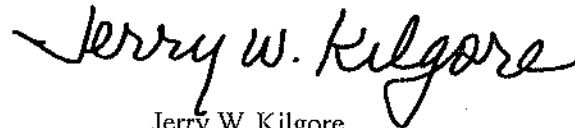
The Honorable Kevin G. Miller
October 15, 2003
Page 7

Conclusion

Accordingly, I am of the opinion that a school board has authority to discipline, in the context of the complete analysis herein, a student whose action is in conformance with the language of Chapter 619 of the 2003 Acts of Assembly, which amends and reenacts § 18.2-308.1(B), pertaining to the possession of an unloaded firearm in a locked vehicle trunk.

With kindest regards, I am

Very truly yours, .

A handwritten signature in black ink that reads "Jerry W. Kilgore". The signature is written in a cursive, flowing style.

Jerry W. Kilgore
Attorney General

2:213; 1:837; 1:210/03-083