



COMMONWEALTH of VIRGINIA
Department of Education

December 4, 2015

TO: Division Superintendents

FROM: Steven R. Staples, Superintendent of Public Instruction

SUBJECT: Board of Education Resolution to Implement an Amendment to § 22.1-207.4 of the *Code of Virginia*, Nutritional Guidelines for Competitive Foods – School-sponsored Fundraisers

The Board of Education (Board) adopted proposed *Regulations Governing Nutritional Guidelines for Competitive Foods Available for Sale in Public Schools* pursuant to § 22.1-207.4 of the *Code of Virginia (Code)* on May 13, 2014. The regulations are undergoing Executive Branch review, as required by the Administrative Process Act, and are pending final adoption. There are no allowances for exemptions for fundraisers selling foods that do not meet federal and state nutritional standards in the proposed regulations. However, state law enacted in 2015 by House Bill 2114, referenced below, requires the regulations to have such exemptions:

“... The regulations promulgated pursuant to this section shall permit each public school to conduct on school grounds during regular school hours no more than 30 school-sponsored fundraisers per school year, during which food that does not meet the nutrition guidelines for competitive foods may be sold to students...”

House Bill 2114, which amended § 22.1-207.4 of the *Code*, was approved by the 2015 General Assembly and signed into law by Governor McAuliffe. It provides that the regulations promulgated pursuant to the *Code* section shall permit each public school to conduct no more than 30 exempted school-sponsored fundraisers per school year on school grounds during regular school hours. The Board of Education will incorporate this amendment to § 22.1-207.4 of the *Code* into the *Regulations Governing Nutritional Guidelines for Competitive Foods Sold in Virginia Public Schools* at the time of final adoption.

In the interim, in order to be compliant with state law, the Board adopted a resolution at its November 19, 2015, meeting. The resolution is Attachment A to this memo. The following is an excerpt from the resolution:

“...NOW THEREFORE, BE IT RESOLVED by the Board of Education that local school divisions shall permit, effective with the date of adoption of this resolution, each public school to conduct on school grounds during the regular school hours, no more than 30 school-sponsored fundraisers per school year, during which food and beverages that do not meet the nutrition guidelines for competitive foods may be sold to students. Pursuant to the Regulations for the School Breakfast Program and the Regulations Governing School Lunch Sale of Food Items, the sale of any such food or beverage items cannot take place in competition with the National School Lunch and School Breakfast programs from 6 a.m. until after the close of the last breakfast period and from the beginning of the first lunch period to the end of the last lunch period.

The Board of Education encourages school divisions to incorporate local standards for fundraisers that include foods and beverages into their respective Local Wellness Policies that are required by federal regulations to ensure consistency among their respective schools in the implementation of these fundraising exemptions. The Board will be providing guidance to assist school divisions for incorporating these local standards into required Local Wellness Policies. That guidance will be developed following an analysis of what other states have done and the best practices.”

Section 10 of the federal Child Nutrition Act of 1966, 42 USC 1779, as amended by the Healthy, Hunger-Free Kids Act of 2010 (HHFKA), requires that all foods sold outside of the school meal programs, on the school campus, and at any time during the school day, must meet the nutrition standards set forth in the interim final rule titled *National School Lunch Program and School Breakfast Program: Nutrition Standards for All Foods Sold in School as Required by the Healthy, Hunger-Free Kids Act of 2010*. This interim final rule, also known as the Smart Snacks rule, was effective July 1, 2014, for all schools participating in the National School Lunch and School Breakfast Programs. The full text of the Smart Snacks rule is available at:

<http://www.gpo.gov/fdsys/pkg/FR-2013-06-28/pdf/2013-15249.pdf>.

The federal Smart Snacks rule applies only to foods and beverages sold to students on the school campus during the school day. The Smart Snacks nutrition standards do not apply to foods and beverages sold at events held after school, off campus, or on weekends, such as school plays or sporting events. However, the Smart Snacks rule allows states to develop a policy which would annually exempt a certain number of school-sponsored fundraisers on school grounds during the school day where foods that do not meet the nutritional standards may be sold. Guidance issued by the United States Department of Agriculture specifies that exempted fundraisers cannot take place more often than the frequency specified by the state agency.

The resolution passed by the Board at its November 19 meeting implements the Smart Snacks rule provision to allow up to 30 school-sponsored fundraisers, per school, per year during which foods sold may be exempted from the federal Smart Snacks standards. At the meeting, Board members emphasized communicating to school divisions their concerns for sound child nutrition and encouraging the sale of healthy choices for fundraisers. School divisions may use resources from the USDA Team Nutrition initiative as guidance and best practices on healthy fundraising options. Information may be downloaded from the Team Nutrition Web site at:

<http://healthymeals.nal.usda.gov/local-wellness-policy-resources/wellness-policy-elements/healthy-fundraising>.

If you have questions or need additional information, please contact Catherine Digilio Grimes, director of school nutrition programs, by e-mail at catherine.digilio-grimes@doe.virginia.gov, or by telephone at (804) 225-2074, or contact the school nutrition program specialist assigned to the division.

SRS/CAC/CDG/idl

Attachment:

A. [Board of Education Resolution, adopted November 19, 2015](#) (PDF)