



SUFFOLK PUBLIC SCHOOLS

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**SCHOOL BOARD WAIVED ATTORNEY/CLIENT PRIVILEGE &
AUTHORIZED PUBLIC RELEASE OF THIS OPINION ON
JUNE 11, 2020**

IOP # 1920-18

The Honorable Sherri D. Story
School Board Member

Dear Board Member Story:

You requested that I render an opinion regarding the process for School Board Members to add items to the public meeting agenda of the School Board.

THE CODE OF VIRGINIA

Virginia Code Section 22.1-78 (1950), as amended, provides:

A school board may 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.

POLICIES OF THE SCHOOL BOARD

School Board Policy Section 2-5.1, provides:

At least one copy of the proposed agenda and other non-exempt materials furnished to members of the School Board shall be made available for public inspection at the same time that documents are furnished to School Board members, unless the materials are exempt under the Virginia Freedom of Information Act. The preparation of the agenda shall be the responsibility of the School Board Chairman with the assistance of the superintendent. Any member of the School Board may submit items for inclusion on the agenda.

School Board Policy Section 2-3.2, subpart D provides, in part:

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D. At least one copy of all agenda packets will be made available to members of the School Board at least seven (7) calendar days in advance of the scheduled meeting of the School Board and, unless exempt, all materials furnished to the members of the School Board for a meeting are made available for public inspection at the same time such documents are furnished to the members of the School Board as provided for in School Board Policy § 2-5.1.

If any member of the School Board is interested in having an item placed on the School Board agenda for an approaching School Board meeting, the school board member must submit the request in writing and the request must be received by the school board chair, with a copy sent to the school superintendent, at least fourteen (14) calendar days prior to the scheduled meeting of the school Board. If a request is not received within fourteen (14) calendar days, the item will be placed for consideration at a subsequent meeting of the School Board.

DISCUSSION

Virginia Code Section 22.1-78 grants to local school boards the authority to adopt bylaws and regulations, not inconsistent with state statutes and regulations of the Board of Education, for its own government, and for the management of its official business. *See* Virginia Code § 22.1-78 (1950), as amended.

Pursuant to this grant of authority, in 1995 the School Board adopted Board Policy Section 2-5.1. As provided by Board Policy, the preparation of the agenda is the responsibility of the School Board Chairman with the assistance of the superintendent. However, “any member of the School Board may submit items for inclusion on the Agenda.” *See* Board Policy § 2-5.1.

This policy was subsequently amended in 2004 and again in 2017. But none of the amendments changed the current language allowing any member of the School Board to submit items for inclusion on the agenda. Although the policy allowed for members to add items to the agenda, the policy did not provide any specific guidance for doing so.

It was in 1995 that the School Board also adopted Board Policy Section 2-3.2 relative to regular meetings and special meetings of the School Board. In 2016, the School Board added subpart D to this policy which provided:

At least one copy of all agenda packets will be made available to members of the School Board and, unless exempt, all materials furnished to the members of the School Board for a meeting are made available for public inspection at the same

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time such documents are furnished to the members of the School Board as provided for in School Board Policy § 2-5.1.

In 2019, this subpart was further amended to require that agenda packets be made available to members of the School Board and for public inspection at least seven (7) business days in advance of the scheduled meeting and a new paragraph was also inserted which reads:

If any member of the School Board is interested in having an item placed on the School Board agenda for an approaching School Board meeting, the school board member must submit the request in writing and the request must be received by the school board chair, with a copy sent to the school superintendent, at least fourteen (14) calendar days prior to the scheduled meeting of the school Board. If a request is not received within fourteen (14) calendar days, the item will be placed for consideration at a subsequent meeting of the School Board.

With the 2019 revision, the School Board for the first time laid out the process to be followed when a member of the School Board wants to submit an item for inclusion on the agenda. There are several steps to be followed. First, the request must be in writing. Second, it must be submitted to the chair, with a copy sent to the school superintendent. And third, the request must be made within fourteen (14) calendar days of the scheduled meeting. If the request is not received within fourteen (14) calendar days, the item is to be placed for consideration at a subsequent meeting.

The 2016 and 2019 amendments to Board Policy Section 2-3.2 do not conflict with Board Policy Section 2-5.1, which allows any member of the School Board to submit items for inclusion on the agenda. In fact, in 2016 when the School Board amended Section 2-3.2 it made specific reference to Board Policy Section 2-5.1. If anything, Board Policy Section 2-3.2 merely reinforces Section 2-5.1 by outlining the process to be followed when any board member wants to submit an item for inclusion on the agenda at an upcoming meeting of the School Board.

CONCLUSION

Under current policies of the School Board any member of the School Board may submit items for inclusion on the agenda provided (1) the member submits the request in writing; (2) the request is sent to the Chair with a copy sent to the school superintendent; and (3) the request is made at least fourteen (14) calendar days before the scheduled meeting.

Please be reminded however, that Board Policy Section 2-3.2 is now under consideration for further amendment. The language being proposed will create an additional requirement before a board member can submit items for inclusion on the agenda. The additional requirement involves

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the chair polling members to ascertain their position with respect to placing the item on the agenda, and if any member objects the matter must be voted on by the full School Board. The language of the proposed amendment to Board Policy Section 2-3.2 reads:

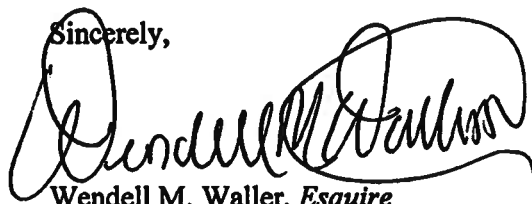
When a school board member requests placement of an item on the agenda, the Chair will immediately poll members of the School Board separately pursuant to Virginia Code Section 2.2-3710(D) for the purpose of ascertaining a member's position with respect to placing the item on the agenda. If any member of the School Board objects, the matter must be placed before members of the School Board at the upcoming meeting and there must be an affirmative vote of the School Board to add the item to the agenda.

The School Board of Virginia Beach has a similar provision with regard to items being added to the agenda by members of the Virginia Beach School Board. The Virginia Beach bylaw provides:

School Board Members may have the privilege of adding items to the published agenda upon request to the Chairman, by the School Board Member, as early as reasonably feasible and an affirmative vote of the School Board membership present at the meeting should any School Board Member object.

I hope I have adequately addressed your question. Should there be any further questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Wendell M. Waller". The signature is fluid and cursive, with a large initial "W" and "M".

Wendell M. Waller, *Esquire*
School Board Attorney

xc: The Honorable Members of the Suffolk City School Board (sent via electronic mail)
Dr. John B. Gordon, III, School Superintendent (sent via electronic mail)