

Virginia Board of Education Agenda Item



Agenda Item: G.

Date: May 22, 2014

Title	First Review of Guidelines and a Model Waiver Form for High School to Work Partnerships		
Presenters	Ms. Lolita Hall, Director of Career and Technical Education Ms. Anne D. Wescott, Assistant Superintendent for Policy and Communications		
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Purpose of Presentation:

Action required by state or federal law or regulation.

Previous Review or Action:

No previous review or action.

Action Requested:

Action will be requested at a future meeting. Specify anticipated date below:

Date: June 26, 2014

Action: Final review

Alignment with Board of Education Goals: Please indicate (X) all that apply:

	Goal 1: Accountability for Student Learning
	Goal 2: Rigorous Standards to Promote College and Career Readiness
	Goal 3: Expanded Opportunities to Learn
	Goal 4: Nurturing Young Learners
	Goal 5: Highly Qualified and Effective Educators
X	Goal 6: Sound Policies for Student Success
	Goal 7: Safe and Secure Schools
	Other Priority or Initiative. Specify:

Background Information and Statutory Authority:

Goal 6: This initiative, required by HB 858 (Orrock), HB 2101 (Ramadan), and SB 1248 (Black), passed by the 2013 General Assembly, provides sound policies for student success through guidelines and a model waiver form so that school divisions can establish High School to Work Partnerships with local businesses.

HB 2101 and SB 1248 added subsection D to § 22.1-227.1 of the *Code of Virginia* to say:

§ 22.1-227.1. Career and technical education.

... D. The Board shall develop guidelines for the establishment of High School to Work Partnerships, hereafter referred to as "Partnerships," between public high schools and local businesses to create opportunities for students who may not seek further education after high school to (i) participate in an apprenticeship, internship, or job shadow program in a variety of trades and skilled labor positions or (ii) tour local businesses and meet with owners and employees. These guidelines shall include a model waiver form to be used by high schools and local businesses in connection with Partnership programs to protect both the students and the businesses from liability.

Each local school board may encourage the local school division's career and technical education administrator or his designee to collaborate with the guidance counselor office of each public high school in the Commonwealth to establish Partnerships and to educate the student body about available opportunities.

Students who miss a partial or full day of school while participating in Partnership programs shall not be counted as absent for the purposes of calculating average daily membership, but each local school board shall develop policies and procedures for students to make up missed work and may determine the maximum number of school days per academic year that a student may spend participating in a Partnership program.

HB 858, a § 1 bill, specified the time frame for the model waiver form to be developed:

1. § 1. The Board of Education shall develop, prior to July 1, 2014, a model waiver form for use by any entity providing a career and technical occupational experience for public secondary school students.

Summary of Important Issues:

The High School to Work Partnerships are programs established between public high schools and local businesses to create opportunities for students to participate in work-based learning experiences that include student apprenticeship, clinical experience, cooperative education, internship, mentorship, job shadowing, or service learning experiences. As evolving technology and globalization constantly change industry needs and work force requirements, it has become more important for career and technical education (CTE) programs to work closely with local employers to ensure that classroom content matches work force needs. By joining forces with local employers, economics and work force leaders, CTE programs can better bridge the gap between school and work to develop a highly-skilled, sustainable work force. These partnerships allow the workplace to inform curriculum decisions and offer students authentic experiences to prepare them for their careers. This relationship grows the supply chain that provides the high-tech work force for today and the future.

Guidelines for establishing effective collaborative partnerships between the high school and business and industry may include, but not be limited to, the following elements: 1) determine compatible policies and procedures to operate; 2) agree on roles and responsibilities; 3) identify and address needs by leveraging resources; 4) define and communicate a common outcome; 5) establish mutually agreed upon goals and strategies; 6) establish metrics to measure success; 7) monitor, evaluate, and report results; 8) implement strategies to nurture, expand, and sustain partnerships; and 9) recognize partners for their contributions.

Although the model waiver would ostensibly release the business from any liability from any injury, harm, or damage caused by the student's participation in the High School to Work Partnership, the Office of the Attorney General has advised us that the waiver is not enforceable. The Virginia Supreme Court has held that this kind of release for future acts of negligence "is prohibited by public policy and, thus, is void," in *Hiatt V. Lake Barcroft Community Association*.

Impact on Fiscal and Human Resources:

The statute and the guidelines encourage, but do not require, school divisions to develop High School to Work Partnerships. School divisions that establish such partnerships have the flexibility to determine the fiscal and human resources that would be needed.

Timetable for Further Review/Action:

The final review of the guidelines and model waiver form is expected to be presented to the Board on June 26, 2014.

Superintendent's Recommendation:

The Superintendent of Public Instruction recommends that the Board of Education accept the guidelines and the model waiver form for first review.

High School to Work Partnerships Guidelines

Background Information

The High School to Work Partnerships Guidelines are the culmination of a strategic review of work-based learning (WBL). The review included a statewide survey of career and technical education administrators, national literary research, and input from stakeholders representing business and industry and secondary education from the Department of Education's eight superintendents' regions. The review was a first step in an initiative to reassess and revitalize the WBL opportunities offered to Virginia's career and technical education (CTE) students. In summary, the report, *A Strategic Review of Work-Based Learning in Virginia: Expanding Opportunities for Students*, reinforced the need to (1) redefine the WBL methods for CTE students; (2) refocus the implementation guidelines to ensure a direct connection between the student's WBL experience and his/her program of studies; (3) provide relevant experiential learning in the workplace that can lead to high-demand, high-skill, high-wage careers; (4) streamline procedures to increase flexibility for schools in redesigning and offering WBL experiences; and (5) build a strong network of business/industry and community partnerships to support student training experiences.

Work-Based Learning Definitions

Work-based learning is a school-coordinated, coherent set of career-development experiences, based on instructional preparations, related to students' career interests or goals, and including partnerships with local business/industry and other community organizations. The seven different work-based learning methods of instruction currently practiced in Virginia are listed and defined below in order from the lowest to the highest degree of engagement.

Job shadowing is a short-term, school-coordinated career-exploration in which the student interviews a competent worker about his/her job and industry and "shadows" (follows) the worker to observe the performance of a variety of job tasks. Prior to job shadowing, the student receives instruction about careers and the process of career choice, develops appropriate questions to ask, and learns the rules and guidelines for grooming, dress, and behavior in the workplace. Job shadowing helps the student make informed career decisions and focus his/her studies. Job shadowing does not provide a standard unit of credit, but the student may enhance his/her grade through the experience.

Mentorship is a structured, school-coordinated method that enables the student to learn about the industry and the workplace with the guidance and support of a worker who has a recognized record of achievement in the occupational field. It requires student preparation, including career exploration prior to the experience. Mentorship does not provide a standard unit of credit, but the student may enhance his/her grade through the experience.

Service learning is a method in which the student engages in community service work for a specified number of hours in order to gain developmental experience. Students and teachers cooperate with local leaders to address community problems and issues, resulting in student service to the community and development of personal, workplace readiness, academic, and citizenship skills. Students engage in critical, reflective thinking and experience the relationship of theory and practice. Service learning does not provide a standard unit of credit, but the student may enhance his/her grade through the experience.

Internship is a progressive, school-coordinated method that places the student in a real workplace environment in order to develop and practice career-related knowledge and skills needed for a specific entry-level job. An internship can be either introductory (short-term) or extended (lasting a summer, a semester, or an entire school year and involving a specified number of hours in the training agreement).

Currently, interns may be paid or unpaid. An internship provides hands-on experience in a particular industry or occupation related to the student's career interests, abilities, and goals and allows him/her to document job-related experiences. Prior to an internship, the student receives the established criteria and guidelines from the workplace supervisor, and throughout the internship, the supervisor evaluates the student. Internship does not provide a standard unit of credit, but the student may enhance his/her grade through the experience.

Clinical experience is a form of cooperative education for Health and Medical Sciences students, except that students are not paid for their clinical work. Clinical experience provides the student with an opportunity to integrate knowledge acquired in the classroom with clinical practice, and it affords practice of the fundamental skills, behaviors, and attitudes needed for professional competence in the healthcare field. Clinical experience is based on observation and treatment of patients at different stages of medical practice. These experiences place students in a variety of healthcare settings so they may better understand the scope of the profession and healthcare needs. Clinical experience is closely supervised, qualifies students for credit toward graduation, and requires a significant number of on-site hours (set by the Virginia Board of Nursing or the Virginia Department of Health).

Student apprenticeship provides the student with opportunities to use job skills and reinforces academic instruction under the guidance of a supervisor in a specific occupational area. Student apprentices are paid for their work. Student apprenticeship is closely supervised by the school coordinator, qualifies students for credit toward graduation, and requires a significant number of on-site hours (up to a maximum of 20 hours per week). Student apprenticeship is designed to lead students directly into an entry-level job, a registered apprenticeship, or a postsecondary program.

Cooperative education is a career-preparation WBL method that combines career and technical education classroom instruction with paid employment that is directly related to the student's plan of study. The school and the employer plan, coordinate, and supervise the instruction and employment so that each contributes directly to the student's career objectives and employability. Virginia students may earn credit toward graduation for cooperative education experiences, and they normally work between 11 and 15 hours per week to achieve a minimum of 396 hours. Currently, there are 236 CTE courses being taught in Virginia that provide students with the option to participate in a cooperative education experience.

High School to Work Partnerships Guidelines

Guidelines for establishing effective collaborative partnerships between the high school and business and industry may include, but not be limited, to the following elements:

- 1) determine compatible policies and procedures to operate;
- 2) agree on roles and responsibilities;
- 3) identify and address needs by leveraging resources;
- 4) define and communicate a common outcome;
- 5) establish mutually agreed upon goals and strategies;
- 6) establish metrics to measure success;
- 7) monitor, evaluate, and report results;
- 8) implement strategies to nurture, expand, and sustain partnerships; and
- 9) recognize partners for their contributions.

High School to Work Partnerships: Model Liability Waiver

To the extent permitted by law, I/we, Insert Parent's Name, the parent(s)/legal guardian(s) of Insert Child's Name, a minor child, freely and voluntarily release Insert Business Name from any claim arising out of such child's participation in the High School to Work Partnerships program established between Insert School Division Name and Insert Business Name

High School to Work Partnerships, hereafter referred to as "Partnerships," are programs, authorized by Va. Code § 22.1-227.1, established between public high schools and local businesses to create opportunities for students to (1) participate in an apprenticeship, internship, or job shadow program in a variety of trades and skilled labor positions or (2) tour local businesses and meet with owners and employees.

This Release does *not* release claims, if any, the Student or the Parent may have against Insert Business Name arising from: (1) those provisions of the Virginia Workers' Compensation Act (§ 65.2-100 et seq.) and related statutes, which as a matter of law may not be waived or released; (2) those provisions of the wage and hour laws, which as a matter of law may not be waived or released; (3) those provisions of workplace safety and health laws, which as a matter of law may not be waived or released; (4) other provisions of state and federal law, which as a matter of law may not be waived or released; and (5) gross negligence or willful misconduct by Insert Business Name, its employees, officers and agents.

We have read this release carefully and understand that by signing it we agree to surrender the right to recover damages, to the extent permitted by law, from Insert Business Name in many cases. We agree to be bound to the terms and conditions of the release. In recognition of this release, we have caused our signatures to be affixed this Insert Day day of Insert Month, Insert Year.

Minor Child Signature

Parent/Guardian Signature

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418 S.E.2d 894
244 Va. 191
Robert David HIETT

v.

LAKE BARCROFT COMMUNITY ASSOCIATION, INC., et al.

Record No. 911395.

Supreme Court of Virginia.

June 5, 1992.

[244 Va. 192] Bernard S. Cohen, Alexandria (Sandra M. Rohrstaff, Cohen, Dunn & Sinclair, on brief), for appellant.

Joseph D. Roberts, Merrifield (Slenker, Brandt, Jennings & Johnston, on brief), for appellees.

[244 Va. 191] Present: All the Justices.

[244 Va. 192] KEENAN, Justice.

The primary issue in this appeal is whether a pre-injury release from liability for negligence is void as being against public policy.

Robert D. Hiett sustained an injury which rendered him a quadriplegic while participating in the "Teflon Man Triathlon" (the triathlon) sponsored by the Lake Barcroft

executors waive, release and forever discharge any and all rights and claims for damages which I may have or [244 Va. 193] m[a]y hereafter accrue to me against the organizers and sponsors and their representatives, successors, and assigns, for any and all injuries suffered by me in said event.

Evelyn Novins, a homeowner in the Lake Barcroft subdivision, asked Hiett to participate in the swimming portion of the triathlon. She and Hiett were both teachers at a school for learning-disabled children. Novins invited Hiett to participate as a member of one of two teams of fellow teachers she was organizing. During a break between classes, Novins presented Hiett with the entry form and he signed it.

Hiett alleged in his third amended motion for judgment that LABARCA, Penland, and Novins had failed to ensure that the lake was reasonably safe, properly supervise the swimming event, advise the participants of the risk of injury, and train them how to avoid such injuries. Hiett also alleged that Penland and Novins were agents of LABARCA and that Novins's failure to direct his attention to the release clause in the entry form constituted constructive fraud and misrepresentation.

In a preliminary ruling, the trial court held that, absent fraud, misrepresentation, duress, illiteracy, or the denial of an opportunity to read the form, the entry form was a valid contract and that the pre-injury release language in the contract released the defendants from liability for negligence. The trial court also ruled that such a release was prohibited as a matter of public policy only when it was included: (1) in a common carrier's contract of carriage; (2) in the contract of a public utility under a duty to

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Community Association, Inc. (LABARCA). The injury occurred at the start of the swimming event when Hiett waded into Lake Barcroft to a point where the water reached his thighs, dove into the water, and struck his head on either the lake bottom or an object beneath the water surface.

Thomas M. Penland, Jr., a resident of Lake Barcroft, organized and directed the triathlon. He drafted the entry form which all participants were required to sign. The first sentence of the form provided:

In consideration of this entry being accept[ed] to participate in the Lake Barcroft Teflon Man Triathlon I hereby, for myself, my heirs, and

furnish telephone service; or (3) as a condition of employment set forth in an employment contract.

Pursuant to an agreement between the parties, the trial court conducted an evidentiary hearing in which it determined that there was sufficient evidence to present to a jury on the issue of constructive fraud and misrepresentation. Additionally, the trial court ruled that as a matter of law Novins was not an agent of LABARCA, and it dismissed her from the case.

The remaining parties proceeded to trial solely on the issue whether there was constructive fraud and misrepresentation by the defendants such as would invalidate the waiver-release language in the entry form. After Hiett had rested his case, the trial court granted the defendants' motion to strike the evidence. This appeal followed.

[244 Va. 194] Hiett first argues that the trial court erred in ruling that the pre-injury release provision in the entry form did not violate public policy. He contends that since the decision of this Court in Johnson's Adm'x v. Richmond and Danville R.R. Co., 86 Va. 975, 11 S.E. 829 (1890), the law in Virginia has been settled that an agreement entered into prior to any injury, releasing a tortfeasor from liability for negligence resulting in personal injury, is void because it violates public policy. Hiett asserts that the later cases of this Court have addressed only the release of liability from property damage or indemnification against liability to third parties. Thus, he contends that the holding in Johnson remains unchanged. In response, LABARCA and Novins argue that the decisions of this Court since Johnson have established

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that pre-injury release agreements such as the one before us do not violate public policy. We disagree with LABARCA and Novins.

The case law in this Commonwealth over the past one hundred years has not altered the holding in Johnson. In Johnson, this Court addressed the validity of a pre-injury release of liability for future negligent acts. There, the decedent was a member of a firm of quarry workers which had entered into an agreement with a railroad company to remove a granite bluff located on the company's right of way. The agreement specified that the railroad would not be liable for any injuries or death sustained by any members of the firm, or its employees, occurring from any cause whatsoever.

The decedent was killed while attempting to warn one of his employees of a fast-approaching train. The evidence showed that the train was moving at a speed of not less than 25 miles per hour, notwithstanding the railroad company's agreement that all trains would pass by the work site at speeds not exceeding six miles per hour.

In holding that the release language was invalid because it violated public policy, this Court stated:

[T]o hold that it was competent for one party to put the other parties to the contract at the mercy of its own misconduct ... can never be lawfully done where an enlightened system of jurisprudence prevails. Public policy forbids it, and contracts against public policy are void.

[244 Va. 195] 86 Va. at 978, 11 S.E. at 829. This Court emphasized that its holding was not based on the fact that the railroad company was a common carrier. Rather, this Court found that such provisions for release from liability for personal injury which may be caused by future acts of negligence are prohibited "universally." 86 Va. at 978, 11 S.E. at 830.

As noted by Hiett, the cases following Johnson have not eroded this principle. Instead, this Court's decisions after Johnson have been limited to upholding the right to contract for the release of liability for property damage, as well as indemnification from liability to third parties for such damage.

In *C. & O. Ry. Co. v. Telephone Co.*, 216 Va. 858, 224 S.E.2d 317 (1976), this Court upheld a provision in an agreement entered into by the parties to allow the telephone company to place underground cables under a certain railway overpass. In the agreement, the telephone company agreed to release the C & O Railway Company from any damage to the wire line crossing and appurtenances. In upholding this property damage stipulation, this Court found that public policy considerations were not implicated. 216 Va. at 865-66, 224 S.E.2d at 322.

This Court upheld another property damage release provision in *Nido v. Ocean Owners' Council*, 237 Va. 664, 378 S.E.2d 837 (1989). There, a condominium unit owner filed suit against the owners' council of the condominium for property damage to his unit resulting from a defect in the common area of the condominium. This Court held that, under the applicable condominium by-laws, each unit owner had voluntarily waived his right to bring an action against the owners' council for such property damage. 237 Va. at 667, 378 S.E.2d at 838.¹

Other cases decided by this Court since *Johnson* have upheld provisions for indemnification against future property damage claims. In none of these cases, however, did the Court address the issue whether an indemnification provision would be valid against a claim for personal injury.

In *Richardson-Wayland v. VEPCO*, 219 Va. 198, 247 S.E.2d 465 (1978), the disputed claim involved property damage only, although

made by VEPCO with a private company for certain repairs to its premises. 219 Va. at 202-03, 247 S.E.2d at 468.

This Court also addressed an indemnification clause covering liability for both personal injury and property damage in *Appalachian Power Co. v. Sanders*, 232 Va. 189, 349 S.E.2d 101 (1986). However, this Court was not required to rule on the validity of the clause with respect to a claim for personal injury, based on its holding that the party asserting indemnification was not guilty of actionable negligence. 232 Va. at 196, 349 S.E.2d at 106.

Finally, in *Kitchin v. Gary Steel Corp.*, 196 Va. 259, 83 S.E.2d 348 (1954), this Court found that an indemnification agreement between a prime contractor and its subcontractor was not predicated on negligence. For this reason, this Court held that there was no merit in the subcontractor's claim that the agreement violated public policy as set forth in *Johnson*. 196 Va. at 265, 83 S.E.2d at 351.

We agree with Hiett that the above cases have not modified or altered the holding in *Johnson*. Therefore, we conclude here, based on *Johnson*, that the pre-injury release provision signed by Hiett is prohibited by public policy and, thus, it is void. *Johnson*, 86 Va. at 978, 11 S.E. at 829.

Since we have held that the pre-injury release agreement signed by Hiett is void, the issue whether Novins acted as LABARCA's agent in procuring Hiett's signature will not be before the trial court in the retrial of this case. Nevertheless, Hiett argues that, irrespective of any agency relationship, Novins had a common law duty to warn Hiett of the dangerous condition of the uneven lake bottom. We disagree.

The record before us shows that Lake Barcroft is owned by Barcroft Beach, Incorporated, and it is operated and controlled by Barcroft Lake Management Association, Incorporated. Further, it is undisputed that the individual landowners in the Lake Barcroft subdivision have no ownership interest in the

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the contract provided that VEPCO would be indemnified against both property damage and personal injury claims. This [244 Va. 196] Court held that the provision for indemnification against property damage did not violate public policy. In so holding, this Court emphasized the fact that the contract was not between VEPCO and a consumer but, rather, that it was a contract

Lake. Since Novins had no ownership interest in or control over the operation of Lake Barcroft, she had no duty to warn Hiett of any dangerous condition therein. See *Busch v. Gaglio*, 207 Va. 343, 348, 150 S.E.2d 110, 114 (1966). Therefore, Hiett's assertion that Novins had a duty to warn him of the condition of the lake bottom, fails as a matter of [244 Va. 197] law, and we conclude that the trial court did not err in dismissing Novins from the case.

Accordingly, we will affirm in part and reverse in part the judgment of the trial court, and we will remand this case for further

proceedings consistent with the principles expressed in this opinion.²

Affirmed in part, reversed in part, and remanded.

1 Although the by-law at issue attempted to release the owners' council for injury to both persons and property, the issue before the Court involved only the property damage portion of the clause.

2 Based on our decision here, we do not reach the questions raised by the remaining assignments of error.