



# COMMONWEALTH of VIRGINIA

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## MEMORANDUM

**TO:** MELISSA L. LUCHAU  
Director for Board Relations  
Virginia Department of Education

**FROM:** WENDELL C. ROBERTS  
Assistant Attorney General *Wendell C. Roberts*

**DATE:** November 18, 2014

**SUBJECT:** Re-Proposed Regulation 8 VAC 20-740 (Action 3377, Stage 7090) Regulations Governing Nutritional Guidelines for Competitive Foods Available for Sale in the Public Schools.

I have reviewed the re-proposed regulation, the text of which was electronically mailed to me on October 29, 2014, to determine if the State Board of Education (Board) has the authority to promulgate the regulation and if the re-proposed regulation comports with applicable state law. Pursuant to Virginia Code §22.1-16, the Board has authority to promulgate regulations to carry out its statutory powers and duties. Additionally, pursuant to the Virginia Code § 22.1-207.4, the Board, in cooperation with the Department of Health, is required to promulgate these regulations governing nutritional guidelines for competitive foods available for sale in the public schools.

It is this Office's view that the State Board of Education has the authority to promulgate this re-proposed regulation, subject to compliance with the provisions of Article 2 of the Administrative Process Act and Executive Order 17 (2014), and has not exceeded that authority.

If you have any questions, please feel free to call me at 804-371-8721.

cc. Ronald C. Forehand, Sr. Assistant Attorney General and Section Chief