

Memorandum

Re: Report Regarding the Adoption of the Everyday Math Books in Stafford County	Date: December 5, 2008
To: Stafford County School Board	From: Edward Hendrie

Executive Summary

The following is a summary of the findings regarding the adoption of the Everyday Math (EDM) Books by the Stafford County School District.

The School District Violated Virginia Law By Excluding Stafford Parents From the Textbook Selection Committee

EDM was the choice of the school district from the outset; the school district excluded parents from the textbook selection committee in order to ensure that EDM was selected. Excluding parents from the selection committee was a violation of Virginia Administrative Code Section 8VAC20-170-10.

Creating an Unlawful Textbook Adoption Committee and then Circumventing that Committee With Yet Another Unlawful Committee

The school district set up an unlawful process for selecting the K-5 math books, and then circumvented its own unlawful procedures in order to control the outcome. A reform math program, like Everyday Math (EDM), was the choice of the school district at the outset of the textbook selection process. The school district set up an unlawful textbook adoption committee made up of teachers that was expected by the district to select a reform math program. When the committee of teachers favored a traditional math program (Harcourt) instead of a reform math program (EDM), the school district altered the selection process to circumvent the committee. The school district took the selection decision from the committee of teachers and gave it to yet another unlawful committee made up of principals. The school district then dropped Harcourt from further consideration, and cobbled together a combination of books that included a textbook that the teachers' committee had already rejected as the only alternative to EDM. The principals were not permitted to even consider Harcourt. As expected, the principals ended up selecting EDM. The school district's next move was to meet with the original committee of teachers in order to "build consensus for Everyday Math, and to begin to map out an implementation strategy." The committee of teachers was persuaded to agree with the selection of the principals. The adoption committee became window dressing, creating a misleading facade that EDM was

the selection of an impartial committee. The school district then repeatedly misrepresented to the public that EDM was the selection of a committee of teachers and parents, when in fact there were no parents at all on either committee.

The Public and the School Board Were Kept in the Dark about the Planned Purchase of EDM Books

The school district waited until the very last minute on the evening prior to the school board meeting before it added the action item for the purchase of EDM books to the agenda and filed it with the school board. That kept the public and the school board in the dark regarding the purchase of EDM books, until the moment the school board was presented with the action item.

The School Board Was Misled Regarding Compliance With School Board Policy

The school district violated the School Board Textbook Adoption Policy § 6-46 in its selection of EDM and then misrepresented to the school board that it had complied with that policy.

[On June 24, 2008, the school board adopted Regulation 3401-R, which established new procedures for the adoption of textbooks. Regulation 3401-R is deficient in its compliance with 8VAC20-170-10. Those deficiencies are beyond the scope of this report.]

Violation of Virginia DOE Regulations - No School Board Appointed Textbook Committee

The school district violated Virginia Administrative Code Section 8VAC20-170-10 (3) by failing to use a textbook evaluation committee appointed by the school board, therefore circumventing the due process for citizen input required by Virginia law.

Violation of Virginia FOIA - No Public Notice

The school district violated the Virginia Freedom of Information Act, Virginia Code § 2.2-3707, by failing to give public notice of textbook review committee meetings.

Violation of DOE Regulation - No School Board Criteria

The school district violated the Virginia Administrative Code Section 8VAC20-170-10 (1) by failing to follow school board criteria for selection of the EDM books.

Violation of Either DOE Regulation for Failure to Give Notice to Parents for Review or a Violation of the Virginia Records Retention Law for Destroying the Notice

There is probable cause to believe that there was a violation by the school district of Virginia Administrative Code Section 8VAC20-170-10 (5) by failing to provide notice to parents that books under consideration were available for review. The school district initially stated that the

notice was sent out by the Public Information Office. However, the Public Information Officer stated that she searched her records and could not find any record of any such notice. The Public Information Officer further stated that the Public Information Office did not provide public notifications of textbook reviews/adoptions until 2006. Since the K-5 textbooks in question were being reviewed in 2005, it would seem that public notice was not given. Later, the school district changed its answer, apparently after realizing that notice was not sent out by the public information officer. The school district now maintains that notice was sent out by each school. However, the school district could not produce a copy of the alleged notice. If public notice was not sent out that would be a violation of section 8VAC20-170-10. The Superintendent admitted that the school district did not maintain copies of the alleged notice announcing that textbooks under consideration were available for review. If in fact the notices were sent out, the destruction of the notice is a violation of Section 008121 of Schedule 21 of the Virginian Records Retention Law. I will leave that issue to the school board to resolve.

Possible Violation of DOE Regulation - Consideration of Non-Approved Textbook

There was also a possible violation of Virginia Administrative Code Section 8VAC20-230-30 by not following proper procedures when considering a non-approved textbook. The school district considered the fifth grade TERC Investigations as one of its final choices. That textbook is not approved for instruction by the Virginia Department of Education. As such, special procedures must be followed for the adoption of a non-approved textbook. Those special procedures were not followed. However, since TERC Investigations was ultimately not chosen, it is not clear whether there was a violation. I will leave that issue to the school board to resolve.

Violation of Either the Records Retention Law or the Virginia FOIA

I was informed by the school district that it could not find a copy of the invitation sent out to parents and teachers inviting them to be on the textbook adoption committee. The school district either violated the Records Retention Law or the Virginia FOIA; it is not clear which law they violated. If the invitation was lost or destroyed then the school district violated Section 008121 of Schedule 21 of the Virginian Records Retention Law by not retaining a copy of the invitation. If the invitation exists, then the school district violated the Virginia Freedom of Information Act, found at Virginia Code § 2.2-3704, by not providing that record to me pursuant to my request.

School District Denies All Wrongdoing

I presented the school district with my conclusions and it denied each and every charge. The responses by the school district to each of the charges are listed in the body of the report below.

Action Requested

Rescind Authorization

The school board should rescind its authorization granted to the school district for the Everyday Math books, since it was authorized based upon a misrepresentation by the school district that it complied with the school board policy for the review of textbooks. The school board should require the school district to conduct a math textbook review in compliance with Virginia Administrative Code Section 8VAC20-170-10. In particular, the criteria for selection should be established by the school board, the textbook evaluation committee should be appointed by the school board, there should be public notice of the textbook review committee hearings as required by Virginia Code § 2.2-3707, and public notice should be given to parents that the textbooks under review are available for review. In addition, if the school district considers unapproved textbooks, it should follow the requirements of Virginia Administrative Code Section 8VAC20-230-30 for the selection of unapproved textbooks.

Provide Notice to Parents That They Have a Choice to Opt Their Children out of EDM

Since the parents were excluded from the selection process, they should be given notice that pursuant to School Board Policy 9502, they have a choice to opt out of the EDM reformed math curriculum and have their children taught standard mathematics.

Establish an Ombudsman's Office

The present system is inadequate for the school board to provide oversight of the school district. The school district feels no obligation to assist a citizen in getting to the truth. For example, when I asked some questions that appeared would uncover evidence of wrongdoing, the superintendent informed me via email that "it is not my intention to continue to conduct research or engage in a dialogue concerning these issues. Unless you have a specific FOIA request, there appears to be little else I can do to respond to your interests." It is unacceptable for the school district to stop an inquiry at any time it sees fit.

The school board should establish an ombudsman's office under the authority of the school board. The ombudsman's office should have the authority to investigate complaints by parents against the school district. That investigative authority should include, but not be limited to, the authority to establish (with the advice and consent of the school board) ad hoc investigative and review committees. Initially, the ombudsman's office should be assigned to investigate the unresolved issues regarding violations of Virginia law in the selection of the EDM math books. In addition, the ombudsman's office should investigate the selection process for EDM, its manipulation in favor of EDM, who manipulated the process and why.

Only an ombudsman's office could compel the school district to answer questions regarding alleged wrongdoing. Without an ombudsman's office, we have the fox guarding the henhouse.

Amend School Board Policy 1113

School Board Policy 1113 should be amended to state:

“The school district shall be open and responsive to questions from the public. Questions shall be answered in a timely manner. Except as expressly prohibited by law, the public shall be given open access to information contained in records held by the school district.”

Retain Counsel

The school board should fund retained counsel, who is independent of the school district, for the purpose of giving legal advice to the school board. The counsel should be available to confer with the school board on a regular basis regarding the legality of proposed actions of the school district and to guide the school board when making important decisions.

Vetting Process For Large Purchases

The school board should institute a vetting process for large purchases, textbook purchases, curriculum changes, and significant changes in school scheduling. The vetting process should include, but not be limited to, review by counsel for compliance with Virginia laws and a requirement for advance notice to the public.

Report

The School District Violated Virginia Administrative Code Section 8VAC20-170-10 (3) By Excluding Stafford Parents From the Textbook Selection Committee

EDM was the choice of the school district from the outset, and efforts were made by the school district to exclude parents from the textbook selection process in order to ensure that EDM was selected. The former Supervisor for Math and Science has admitted that the objective for the school district would be the selection of a reform math curriculum. EDM is a reformed math curriculum. The supervisor admitted to that fact before the math textbook selection process even started in Stafford County. In the Fall of 2004, the Supervisor for Mathematics and Science for the Stafford County School District stated the following in an article in *Intersection*, which is an the Exxon/Mobile newsletter: **"We are moving strongly toward meeting our goal to build a critical mass of teachers who will be ready to adopt a reform curriculum during the textbook adoption process in 2004-2005."**¹

¹Vicki Inge, Leadership Progress in Stafford County Schools, The Journal of Mathematics and Science: Collaborative Explorations, Volume 8 (2005) 73-76 (quoting Exxon/Mobil newsletter, *Intersection*, Fall 2004)

<http://www.math.vcu.edu/g1/journal/Journal8/Part%20II/Inge.html> .

Apparently the former Supervisor for Math and Science planned on using her “critical mass of teachers” to stack the adoption committee. Every single one of the 38 persons on the textbook adoption committee was a teacher employed by the Stafford County School District. Furthermore, none of the 34 parents who were listed as taking part in the K-5 Textbook Adoption Parent Focus Meeting were ever appointed to the Textbook Adoption Committee.

However, the school district has repeatedly represented that the K-5 Textbook Adoption Committee was a committee that included parents. For example, on January 20, 2008, the Assistant Superintendent for Instruction explained the K-5 Textbook Adoption Committee procedure as follows: “In preparation for the selection a committee of **parents**, teachers, and administrators were gathered to review the textbook options from the Virginia textbook adoption list. A majority of **parents**, teachers, and administrators selected the Everyday Math program.”

On April 24, 2008, the Supervisor for Mathematics and Science told me in an email that “[t]he schools invite **parents** and teachers to be a part of the committee. He also stated that “[p]**arents** participated on the committee from each school.”

On May 19, 2008, the Supervisor for Mathematics and Science in response to a question of whether there was notice given to the public of the date, time, and location for any of the committee meetings, he told me that “[n]otice was provided to the committee members that included **citizens/parents** and teachers.”

On August 18, 2008, the Assistant Superintendent for Instruction stated in an email to me that “[p]er the request of the Supervisor of Math and Science, each building principal invited **parents** and teachers to participate on the textbook committee.” He stated in the same email that [o]ur textbook committees consist of teachers and **parents**.”

The school district’s repeated representation of the committee as being made up of teachers and parents was a deception. In fact, there was not a single non-employee parent on the committee. It seems that a careful effort was made to ensure that no parents got on the committee. The reason is obvious. The school district needed the “critical mass of teachers ready to adopt a reform curriculum during the textbook adoption process,” and they were not going to allow the parents to dilute that critical mass. The school district then misrepresented to the public that the committee consisted of teachers and parents.

Virginia Administrative Code Section 8VAC20-170-10 states: “The Board of Education places with local school boards the responsibility for the selection, approval, and utilization of instructional materials. In the selection of instructional materials, the local school board is responsible for . . . [a]ppointing a division evaluation committee which should include, when appropriate, parents, students, teachers, supervisors, and nonparent patrons.” Having a committee that does not include parents is a violation of Virginia law. There is no indication that it would not be appropriate to include parents in the committee. In fact, the school district’s repeated and misleading description of the selection committee as being a committee of parents and teachers

suggests that the school district itself is of the view that it was entirely appropriate to have parents on the committee.

The December 9, 2004, memorandum from the former Supervisor for Mathematics and Science to the members of the K-5 Textbook Selection Committee clearly indicates that the school district knew full well from the outset that there were no parents on the committee, despite its continual description of the committee as being made up of parents and teachers. The memo describes the committee members as “teachers in each school” and the evaluation as “the teachers [sic] evaluation.” The fact that the CC at the bottom of the memo simply states “Principal” suggests that it was a form memo that was sent to each committee member at each school and that it would be understood by the recipient that the principal of that school would receive a courtesy copy. Having the CC indicate “Principal” would make no sense if the memo were being sent to parents.

It seems that the present Supervisor for Mathematics & Science’s statement that an invitation was sent to teachers and parents to be a part of the textbook adoption committee was an overstatement. It is inconceivable that no parents would have accepted the invitation. Since no parents were on the committee, it is an ineluctable conclusion that no invitations were sent out to parents; the parents were intentionally kept off of the committee. The former Supervisor for Math and Science’s apparent effort to stack the committee with a “critical mass of teachers who will be ready to adopt a reform curriculum” did not work. The committee ended up preferring Harcourt, which is a not a reform math textbook. As will be explained below, the school district then introduced a scheme to circumvent the selection committee of teachers and remove its favored traditional textbook selection of Harcourt from further consideration.

The (Unlawful) Teacher Committee Recommendation Was Ignored, and the Decision Making Process Was Deliberately Steered Away from the Recommended Textbook and Toward Adopting Everyday Math (EDM) by Creating Another (Unlawful) Committee of Principals to Make the Choice

The Textbook Adoption Committee recommendation was ignored, and the decision making process was deliberately steered toward adopting Everyday Math (EDM).

The review committee initially reviewed 7 textbooks and narrowed it down to the top 3. As the chart below illustrates, Harcourt was the overall choice of the textbook review committee. Harcourt had 4 clear first choice grade wins out of a total of 6. Harcourt had 41 total first choice votes out of 94 total first choice votes. EDM tied with TERC investigations each gaining 1 first choice grade win out of 6. EDM came in second in first choice votes with 29 out of 94, followed by TERC Investigations with 23 out of 94.

According to the time line prepared by the school district, however, the school district alleged that there was no consensus of the committee on the preferred textbook. That allegation is subject to interpretation. If by consensus the school district means majority of votes by grade,

then Harcourt clearly had a majority; it was the winning choice of 4 out of the 6 grades. If the school district means total first place votes, then there was not a majority for any of the textbooks and therefore no consensus, however, Harcourt was clearly the first choice.

If the school district were truly trying to reach a consensus by a majority of the available voters, then it should have had a run off between the first and second place textbook choices (Harcourt and EDM). That was not done. Instead, Harcourt was dropped from any further consideration, and a hybrid cobbling of two textbooks was proposed in opposition to EDM. Why drop (Harcourt), which was the textbook that was clearly the favored textbook by the committee? Because it was not a reformed math program. The process was steered away from a standard math curriculum (Harcourt) and toward EDM, which is a reformed math curriculum.

First Choice Votes for Each Textbook out of 15 Stafford Elementary Schools (April 11, 2005)

	Kinder	1 st Grade	2 nd Grade	3 rd Grade	4 th Grade	5 th Grade	Total
Harcourt	5	6	5	7	9	9	41
EDM	4	5	6	4	5	5	29
TERC	6	5	4	5	2	1	23
No Vote			1				1
Total Votes	15	16	16	16	16	15	94

- ☞ **Harcourt:** most first choice votes of the committee in **4** out of **6** grades.
- EDM: most first choice votes of the committee in **1** out of **6** grades.
- TERC Inv: most first choice votes of the committee in **1** out of **6** grades.

The reason that there are 16 first place votes registered for grades 1, 2, 3, and 4, when there were only 15 school committees taking part in the vote is that there was a tie in one of the schools for first choice in each of those grades. Consequently, each textbook that was tied received one first place vote. That caused the total of available first place votes to be 16 out of only 15 elementary schools.

As you can see by the chart, Harcourt was the first choice of the textbook review committee. How then did the school district end up selecting EDM?

Once it became clear that Harcourt was the preference of the committee, the former Supervisor for Mathematics and Science decided to remove from the committee of teachers the decision of which textbook to select. She decided to give the selection authority to the school principals. By

switching to a committee of principals, the former supervisor replaced one unlawful committee (the committee of teachers with no parents) with another unlawful committee (a committee of principals with no parents). As you recall Virginia Administrative Code Section 8VAC20-170-10 states that the evaluation committee “should include, when appropriate, parents, students, teachers, supervisors, and nonparent patrons.” The second committee of principals, just as with the first committee of teachers, did not have any parents on the committee as required by the DOE regulation.

Before conferring with the principals, the Supervisor for Mathematics and Science, did something very strange. On April 20, 2005, she created a Plan A and a Plan B, which were apparently presented to the elementary school principals. Plan A was the across the board selection of EDM for all grades K-5. Plan B, was the selection of a joint adoption of Scott Foresman and TERC Investigations. Scott Foresman was not among the top three textbooks voted upon by the committee. Scott Foresman had been eliminated from further consideration during the preliminary evaluation stage by the committee. Scott Foresman was not among the top three textbooks voted upon by the committee in the second stage of its review. However, the school district dropped the Harcourt textbooks from consideration and replaced it with a hybrid combination of TERC Investigations and Scott Foresman. Harcourt, which was the textbook selected by the committee, was not presented to the principals as an option.

One would think that if there is to be a run off between two finishers, it should be between the first and second place finishers. However, when the first place finisher is dropped from the contest and another choice is substituted, one has to wonder why first place finisher was dropped? The only reasonable explanation is that the process was circumvented and being steered to favor the second place finisher. What better way to ensure that the second choice wins than to get rid of the foreseeable winner and substitute a weak alternative.

The present Supervisor for Mathematics & Science claimed in an email to me that Harcourt was dropped from the list of textbooks at a meeting of the textbook committee and that the former Supervisor for Math and Science was a member of the committee. He stated that Plan B originated at a meeting of the principals and it was introduced by the former Supervisor for Math and Science as a result of the work of the committee.

The explanation given by the present Supervisor for Mathematics & Science, who apparently was passing along what he was told by others at the school district, simply does not comport with the written documentation. The Textbook Adoption Timeline provided to me by the school district states that at the meeting of the adoption committee on April 11, 2005 (the time line has a typo, it states 2004, it should state 2005) the decision was made to share the data with the elementary school principals. There is no mention of altering the data to remove Harcourt. There is no mention of proposing two plans to the principals.

Furthermore, in a March 11, 2008 I sent an email to the present Supervisor for Mathematics & Science in response to information that he forwarded to me from his colleagues at the school

district indicating that Plan B was decided upon at a meeting of the principals. In the email I stated: "It is my understanding that Plans A and B were prepared on April 20, 2005, by the former Supervisor for Math and Science and submitted on April 21, 2005 to the elementary school principals for their selection of one of those two plans. It appears that the list was prepared by [the former Supervisor for Math and Science] one day before the meeting with the principals. Unless I am missing something, the principals could not have come up with Plan B at their meeting, because it was prepared by [the former Supervisor for Math and Science] before the principals met." The present Supervisor for Mathematics & Science did not address my conclusion in any of his reply emails.

In an effort to clarify this issue, I sent the present Supervisor for Mathematics & Science an email on March 16, 2008, asking him if he could tell me when and where the meeting was held and who was at the meeting at which Plan B was decided upon. On April 21, 2008, the present Supervisor for Mathematics & Science replied that the meeting was held at the Professional Development Center, but that the former Supervisor for Math and Science did not remember the date and he (the present supervisor) did not know the date of the meeting. That suggested to me that there was another meeting other than the April 21, 2005 meeting of the principals listed on the time line, because the present Supervisor for Mathematics & Science was certainly aware of the April 21, 2005 meeting listed in the time line he sent me, as I had discussed the significance of that meeting twice in separate emails to him. It would seem that if the meeting to which he was referring was the April 21, 2005 meeting, he could have simply said so, but he did not.

On April 24, 2008, I told the present Supervisor for Mathematics & Science that I inferred from his response that there is no written record of the time, date, or place of the meeting. To which, the present Supervisor for Mathematics & Science replied on May 19, 2008, that there is a written record of the time and date, but that he did not have the record "at this time." The implications of his answer are troubling. I originally made the request for the date and time of the meeting in an email on March 16, 2008, and his initial response on April 21, 2008, was that he did not know the date and time of the meeting. Since we now know that the record exists, he would have been able to use the record to tell me the date and time of the meeting in his April 21, 2008, response. Yet, he claimed in that email that he did not know the date. His revelation to me that the record existed, but that he did not have it "at this time," was made over two months after my initial request for the information. He had two months to provide me the answer, which clearly was available to him, yet he claimed he did not know the answer. It seems that the present Supervisor for Mathematics & Science was playing cat and mouse with me on the information I was requesting.

I can only infer that the date of the meeting of the principals was in fact on April 21, 2005, as indicated in the time line. The time line is clearly intended to memorialize the chronology of events leading up to the adoption of EDM. It would seem that time line is the written record to which the present Supervisor for Mathematics & Science referred. Could it be that the supervisor, or someone else at the school district, did not want to confirm the fact that the meeting of the principals was on April 21, 2005, because that would prove that the decision to

come up with Plan B was not made at the meeting of the principals, but rather by the school district prior to the meeting?

The chronology states that the meeting with the principals was on April 21, 2005, whereas Plans A and B were dated as being prepared on April 20, 2005. Plans A and B could not have originated at the April 21st meeting of the principals, since it was prepared the day before the meeting. Furthermore, the document containing Plans A and B clearly indicates that it was not prepared by the principals or the committee. That document indicates in the heading that it was “Prepared by Supervisor for Mathematics and Science April 20, 2005.”

The information from the school district that was passed to me through the present Supervisor for Mathematics & Science that the committee came up with Plan B cannot possibly be correct, since Scott Foresman, which was part of Plan B, had already been rejected by the committee in the initial selection process. At the April 11th meeting the committee only had data from the three remaining textbooks under consideration (Harcourt, TERC, and EDM). The time line indicates that the agreement at the April 11th committee meeting was simply to share the data with the principals. That data would not have included Scott Foresman or the hybrid Plan B. There was no data on Scott Foresman and therefore it could not have been part of the data that the committee voted upon to share with the principals. It seems that Plans A and B were actually a circumvention of the wishes of the textbook adoption committee, who at their April 11th meeting simply agreed to have its data shared with the principals.

The present Supervisor for Mathematics & Science further states that the former Supervisor for Math and Science was a member of the textbook adoption committee. However, her name does not appear on any of the committee member lists supplied to me by the school district. In fact, in a December 9, 2004, memorandum to the textbook adoption committee, the former Supervisor for Math and Science indicated that the memo is from her in her capacity as the “Supervisor for Mathematics and Science” to the “K-5 Textbook Committee.” In the memo she indicated that she “would like to meet with the Adoption Committee on Monday, January 10th.” Clearly, the former Supervisor for Math and Science did not view herself as a member of the committee. Why then would the present Supervisor for Mathematics & Science represent the former Supervisor for Math and Science as a member of the committee? The present Supervisor for Mathematics & Science is passing along what he has been told by the school district. Could it be that someone in the school district wanted to conceal the role of the school district as the true authority that decided upon the adoption of EDM by misrepresenting the former Supervisor for Math and Science as a member of the textbook committee and therefore cloaking the decisions of the school district as those of the textbook adoption committee?

Another odd thing about Plans A and B is that there is no evidence that they were submitted to the textbook adoption committee for a vote. They were presented to an entirely different group, the school principals. What better way to conceal the circumvention of the selection process than to cut out the group who made the first selection. There is no evidence that the textbook adoption committee had any knowledge that its first choice of Harcourt was taken off the table

for consideration when the principals made their selection. In fact, the committee fully expected that the principals were going to review the committee data on the three remaining textbooks (Harcourt, TERC, and EDM), not vote on plans that the committee had never considered.

It was not the original plan to have the principals decide on the textbooks. Introducing the principals into the selection process seems to have been a contrivance that was introduced by the school district when it looked like EDM was not going to be selected. The plan by the school district from the beginning was to have the review committee make the final recommendation to the school board. The December 9, 2004, memorandum from the former Supervisor for Math and Science to the textbook adoption committee members makes that clear. It states: "In late March the division-wide committee will review the results of the teachers evaluation and make final recommendations for adoption to School Board." The April 11, 2005, full adoption committee meeting was for the purpose of deciding on the textbook to recommend to the school board. Instead, the decision was taken out of the committee's hands and given to the principals. The excuse for taking the decision from the committee was that there was no consensus on the committee for any one textbook.

If the issue was lack of consensus, the logical thing to do would be to narrow the choice to the two finalists. The top two vote getters should have been subjected to a vote of the committee. That was not done. As we have seen, the decision was taken away from the committee, and given to the principals, who were offered two very different alternatives than those that were selected by the committee. It would seem that if Plans A and B were ever presented to the committee, it would have raised eyebrows among the committee members; they would have wanted to know what happened to Harcourt, and why they were suddenly being asked to consider a textbook (Scott Foresman) that they had previously rejected in the first cut. Furthermore, it is unclear if the principals were ever informed that Harcourt was the first choice of the committee. It seems unlikely they were informed about the committee preference for Harcourt, since the principals were given only the choice between Plans A and B, which did not include Harcourt.

It seems that someone in the school district was did not want Harcourt as the textbook selection and was concerned that having Harcourt as a choice for the principals would scuttle plans of adopting EDM. Harcourt was taken off the table as a choice and replaced with Plan B, which was a sure loser. Plan B stated that "schools may choose full implementation of [TERC] Investigations as the primary program at grades 3,4, and/or 5." TERC is not an approved math textbook in Virginia for Grade 5, and so the Plan B could not even be lawfully implemented, since the school district did not comply with the Virginia regulations for adopting an unapproved textbook (8VAC20-230-30). Furthermore, under 8VAC20-230-30, the individual schools do not have autonomous discretion to select an unapproved textbook. Plan B itself incorporated an unlawful procedure for textbook selection.

It appears that the review process was circumvented to steer the decision toward selecting EDM (Plan A) as the math textbook. With Harcourt dumped, and the only other choice being a combined selection that was not reviewed by the committee, it was clear that Plan A, which was

EDM for all grades, was going to be the choice. In fact, there was no real choice at all. The principals could not have had any basis to choose plan B, since there was no data to support it, because it was not considered or voted upon by the committee.

I asked the present Supervisor for Mathematics & Science in an email “who from the school district made the final decision to select Everyday Math as the K-5 math book and submit that selection to the school board for final approval? Was a vote taken? If so, what was the vote?”

The supervisor responded: “The recommendation came from the textbook adoption committee (I believe you have a list of members) and the principals from the elementary schools. I do not have a tally sheet of the votes taken.”

The present Supervisor for Mathematics & Science suggests that the final decision to select EDM was a joint decision of the principals and the textbook adoption committee. However, the textbook adoption time line, prepared by the school district, shows that on April 27, 2005, which was just 6 days after submitting Plans A and B to the principals, Plan B was no longer even being considered. The plan to implement EDM was solidified. The time line lists the following statement opposite April 27, 2005: “Meet with the County Adoption Committee to build consensus for Everyday Math and to begin to map out an implementation plan.”

The April 27th entry indicates that the committee of teachers was to be lobbied to build a consensus for EDM. In other words the committee was not making the selection; the selection was already made by the principals, and the committee of teachers was to be convinced to agree with it. The school district had already decided upon EDM and wanted to begin to “map out an implementation plan.” There was no choice between competing textbooks put before the committee of teachers; the school constructed a plan to build consensus in favor of EDM on the committee. The same committee that had a little more than two weeks earlier had shown a preference for Harcourt was going to be urged to agree to accept EDM.

The school district did not dare try to build a consensus for EDM during the April 11th committee hearing, because Harcourt was still on the table as a choice, and Harcourt would have had the advantage in a run off vote. The school district instead removed the issue from the committee of teachers, dropped Harcourt from consideration, had the principals select EDM, and then presented EDM back to the committee of teachers as the selection of the principals. The committee was then lobbied to “build consensus for Everyday Math and to begin to map out an implementation plan.”

Having the committee made up of teachers instead of a mix of parents and teachers made the process for approval easier. The teachers were not going to buck the choice of their superiors, the principals. With no parents on the committee, the school district could ensure a subservient committee that would yield to the choice of the principals. The time line suggests that the reason that the present Supervisor for Mathematics & Science has no record of a tally sheet of the votes taken is because none ever existed; a vote suggests a choice between options. The committee

members were given no option, they was lobbied to agree with EDM, which was represented as the selection of the principals, who were their bosses.

When the textbook adoption committee did not select the reform math curriculum of EDM, the committee's favored choice of Harcourt, which is a traditional math textbook, was dropped from further consideration. The school district changed the textbook adoption process in midstream. The adoption committee was disregarded and the deciding body was changed to the principals, who were not allowed to choose Harcourt. The principals were guided to choose EDM, by being presented with a weak hybrid alternative to EDM. The committee of teachers was then lobbied to go along with EDM as the textbook selected of the principals. The evaluation committee of teachers, in the end, was circumvented and became window dressing. The school district has repeatedly referred to the committee as a committee made up of teachers and parents, when in fact it seems that it was really a committee only of teachers. The committee was being used by the school district to create a facade of community involvement, when in fact there was no community involvement.

The Public and the School Board Were Kept in the Dark about the Planned Purchase of EDM Books

The school board voted to purchase the K-5 EDM books on May 24, 2005. The superintendent informed me via email that the action item for the K-5 EDM purchase was posted on the school board agenda² on May 23, 2005. The code for the PDF of the action item for the purchase of the K-5 EDM books was created at 4:45 p.m. on May 23, 2005. That file was modified a few minutes later on that same day at 4:58 p.m., which means that the 4:45 p.m. document was a rough draft, which was not finalized until 4:58 p.m. That means that the PDF document could not have been posted on the website agenda any earlier than May 23, 2005 at 4:58 p.m. The public receive less than 24 hours notice that the school board was going to vote on the purchase of EDM books, which was a change from the traditional math to a new reform math curriculum.

The school district stated that they do not have any records that reflect when the action item was filed with the school board. However, the evidence suggests that the action item was not filed with the school board until the evening before the school board meeting. The fact that the 4:45 p.m. document was not the finalized document means that the underlying document was later modified and therefore it could not have been filed with the school board any earlier than some time after its last modified time at 4:58 p.m. That means that the school board probably did not receive the action item until it arrived for the school board meeting the afternoon of May 24, 2005. There was a full slate of business that day to which the school board had to attend and so it is unlikely that the school board gave any real reflection to the details of the purchase of the EDM books.

The school district waited until the very last minute on the evening prior to the school board

²<http://www.doe.virginia.gov/Div/Stafford/SchoolBoard/Agenda/A052405.html> .

meeting before it filed the action item. That kept the public and the school board in the dark until the school district was able to get the school board to approve the purchase. It was only after the school board approved the purchase that the public became aware that EDM was being adopted as the new math curriculum in Stafford County. It was too late to stop the curriculum change to fuzzy math since the school board had already authorized the purchase. The genie was out of the bottle.

The School District Misrepresented to the School Board That it Complied with School Board Policy § 6-46

The school district violated the School Board Textbook Adoption Policy § 6-46 in its selection of EDM and then misrepresented to the school board that it had complied with that policy. The May 24, 2005 action item filed with the school board requesting authorization for the purchase of the EDM books states: "AUTHORIZATION REFERENCE: School Board Policy 6-46." By that statement, the school district represented to the school board that it complied with School Board Policy § 6-46. In fact, there was no such compliance. School Board Policy § 6-46 on Textbook Adoption stated: "All basal textbooks used in the school division must be adopted by the Stafford County School Board in accordance with regulations established by the State Board of Education. All supplemental textbooks shall have the approval of the superintendent or his/her designee prior to use in the classroom." The school district violated § 6-46 by not complying with the requirements of the Virginia Administrative Code Section 8VAC20-170-10.

The school district misled the school board by misrepresenting to the board that it had complied with school board policy § 6-46, when in fact the school district violated the policy by the procedures it used to adopt EDM. The school district has continued to maintain that it complied with the school board policy. For example, the present Supervisor for Mathematics & Science for Stafford County Public Schools, stated in a 2008 email to me that during the 2005 K-5 textbook adoption process the former Supervisor for Math and Science "followed the textbook adoption policy set forth by the Stafford County School Board." I sent an email on July 22, 2008, to the school district officials informing them that the school district violated the School Board Textbook Adoption Policy § 6-46 in its selection of EDM and then misrepresented to the school board that it had complied with that policy. On August 18, 2008, Assistant Superintendent for Instruction, responded to my email by stating that "SCPS was consistent with the process in School Board Textbook Policy § 6-46 in its selection of elementary textbook selection and adoption. The SCPS Supervisor of Mathematics and Science followed this policy in her adoption process." As documented in the report below, those statements by the Assistant Superintendent for Instruction and by the Supervisor for Math and Science were not true.

[On June 24, 2008, the school board adopted Regulation 3401-R, which established new procedures for the adoption of textbooks. Regulation 3401-R is deficient in its compliance with 8VAC20-170-10. Those deficiencies are beyond the scope of this report.]

Violation of Virginia Administrative Code Section 8VAC20-170-10 (3) for Failure to Use a

Textbook Evaluation Committee Appointed by the School Board

Virginia Administrative Code Section 8VAC20-170-10 was promulgated by the Virginia Board of Education pursuant to the regulatory authority delegated to it by the Virginia General Assembly. The intent of the regulation is to ensure that local citizens have input in the selection of textbooks, primarily through a committee appointed by their elected school board. The evidence reveals that the school district violated Virginia Administrative Code Section 8VAC20-170-10 (3) by failing to use a textbook evaluation committee appointed by the school board, therefore circumventing the due process for citizen input required by Virginia law.

The Virginia Administrative Code Section 8VAC20-170-10 states that “[i]n the selection of instructional materials, the local school board is responsible for . . . [a]ppointing a division evaluation committee which should include, when appropriate, parents, students, teachers, supervisors, and nonparent patrons.”

The school district has acknowledged, through the present Supervisor for Mathematics & Science for Stafford County Public Schools, that it did not use a committee appointed by the school board, but instead created its own committee to select the K-5 math textbooks. Using a committee not selected by the school board was a violation of section 8VAC20-170-10 (3).

On July 22, 2008, I informed the school district of the violation. The Assistant Superintendent for Instruction responded on August 18, 2008 in pertinent part by asking me to “[p]lease provide the regulation that states that a textbook evaluation committee must be appointed by the local school board.” In a follow up email, I informed the school district of the DOE regulation. The school district responded to my follow up email, but only answered the specific questions I raised elsewhere in my email and did not address the failure to use a committee appointed by the local school board.

Violation of Virginia FOIA , 37 Vir. Code § 2.2-3707 for Failure to Give Public Notice of Textbook Review Committee Meetings

The school district has acknowledged that no public notice was given of the date, time, and place of any of the math textbook review committee meetings. Only the committee members were given notice of the committee meetings.

The Virginia FOIA, 37 Vir. Code § 2.2-3701, defines the school board and any committee of the school board established to advise the school board as public bodies subject to the provisions of the FOIA. As explained above, under Virginia law (Virginia Administrative Code Section 8VAC20-170-10) the textbook review committees are supposed to be committees appointed by the school board and therefore subject to the requirements of the Virginia FOIA.

Pursuant to FOIA § 2.2-3707 “[e]very public body shall give notice of the date, time, and location of its meetings by placing the notice in a prominent public location at which notices are

regularly posted. . . . The notice shall be posted at least three working days prior to the meeting.”

No public notice was provided for any of the textbook committee meetings. The failure to give notice was a violation of Virginia FOIA law as codified in 37 Vir. Code § 2.2-3707.

In an email I sent on July 22, 2008 I informed the school district that it violated the Virginia FOIA law by failing to give public notice of textbook review committee meetings. On August 18th the Assistant Superintendent for Instruction replied that “[s]ince the committee was not a public body representing the school board, public notice was not necessary.”

DOE Regulation section 8VAC20-170-10 requires the textbook review committee to be a committee of the school board. The logic of the school district seems to be that since the school district violated one Virginia law by not having a committee of the school board, it was not required to give the public notice that would otherwise be required for such a committee. The school district cannot violate one law and then use that violation as cover for yet another violation.

Violation of Virginia Administrative Code Section 8VAC20-170-10 (1) for Failure to Follow School Board Criteria for Selection of the EDM Math Books

Virginia Administrative Code Section 8VAC20-170-10 states that “[t]he Board of Education places with local school boards the responsibility for the selection, approval, and utilization of instructional materials.”

That regulation further provides that “[i]n the selection of instructional materials, the local school board is responsible for . . . [d]eveloping local criteria for selection.”

I asked the present Supervisor for Mathematics & Science for Stafford County Public Schools, in an email: “What were the criteria for selecting the K-5 math textbooks? Were the criteria developed or approved by the school board?”

The present Supervisor for Mathematics & Science replied that the former Supervisor for Math and Science “followed the textbook adoption policy set forth by the Stafford County School Board.”

In response to his reply, I stated: “The answer is not responsive to the questions. . . . What were the criteria for selecting the K-5 math textbooks? Were the criteria developed or approved by the school board? Please answer those questions.”

The supervisor then replied: “I provided the documents with your first request. I do not have them on my home computer.”

The present Supervisor for Mathematics & Science repeatedly refused to answer whether the selection criteria were provided by the school board. He instead referred me to the school board policy and to the documents prepared by the school district, which he previously sent me.

The documents the supervisor provided me were not criteria developed by the school board, or the supervisor would have clearly said so. The only reasonable conclusion is that the selection of the math books was not pursuant to criteria developed by the school board, as is required by Virginia law.

On July 22, 2008, I informed the school district that there was probable cause to believe that there was a violation of the Virginia DOE Regulations by failing to follow school board criteria for the selection of the EDM books. I told the school district that I could not state with certainty if there was a violation, because the school district has repeatedly refused to answer whether the selection criteria were provided by the school board.

On August 18, 2008, the Assistant Superintendent for Instruction responded by stating that "SCPS utilized similar criteria as the Virginia DOE textbook adoption committee utilized." Once again the school district did not address whether they used school board criteria. It was only after I complained in an email about the evasive responses that I finally received an answer from the Superintendent. On September 4, 2008, he sent me an email explaining that "Stafford County's school board did not provide textbook selection criteria. We used those published by the state board of education which remains our practice."

The school district cannot use the board of education as the source of its selection criteria, since that criteria must come from the local school board. VDOE Regulation 8VAC20-170-10 states that the local school board is responsible for developing local criteria for selection, and that the board of education's responsibility is limited to merely assisting the local school board by publishing guidelines for developing that criteria.

Indeed, the VDOE could not provide otherwise. "The power to operate, maintain and supervise public schools in Virginia is, and has always been, within the exclusive jurisdiction of the local school boards and not within the jurisdiction of the State Board of Education." *Bradley v. School Bd. of City of Richmond, Va.*, 462 F.2d 1058 (4th Cir. 1972) (citing, *County School Board of Prince Edward County v. Griffin*, 204 Va. 650 (Va. 1963)). The Virginia General Assembly has memorialized that authority. Virginia Code § 22.1-28 states that "[t]he supervision of schools in each school division shall be vested in a school board selected as provided in this chapter or as otherwise provided by law." Article VIII, § 4 of the Constitution of Virginia limits the Board of Education to the general supervision of the public school system, whereas, Article VIII, § 7 of the Constitution of Virginia provides that the supervision of schools in each school division is solely within the authority of the local school board.

The school district's failure to select the math books in accordance with local school board criteria means that the selection process for the Everyday Math books was in violation of section

8VAC20-170-10. There is no provision in section 8VAC20-170-10 for the delegation of the development of the local criteria to the school district. Consequently, the school district lacked authority to develop its own criteria to select textbooks, which it appears to have done. Therefore, the criteria used by the school district to select the textbooks were invalid, as they were not the criteria established by the school board.

Violation of either the Virginia Administrative Code Section 8VAC20-170-10 (5) for Failure to Provide Notice to Parents that Books Under Consideration are Available for Review or Violation of Section 008121 of Schedule 21 of the Virginia Records Retention Law for Destroying the Notice

Virginia Administrative Code Section 8VAC20-170-10 places responsibility upon the school board for “[p]roviding notice to parents that books and materials under consideration for approval will be available at designated locations for review by any interested citizens. Provisions should be made for those reviewing such materials to present their comments and observations, if any, to the school board through locally approved procedures. Those actions should be taken which are necessary to assure appropriate consideration of such citizen observations and adequate time for such consideration should be allowed. Such actions might include (i) opportunity to meet with the board, or (ii) opportunity to meet with board-appointed professional committees assigned responsibility for making recommendations to the board.”

I asked the present Supervisor for Mathematics & Science in an email if notice was given to the citizens of Stafford County that the K-5 math textbooks were under consideration for approval? If so, when and how was notice given and what information was contained in the notice? I further asked whether the math textbooks being considered for approval made available for review to Stafford citizens at designated location and if so, when and where were the textbooks made available, and how was notice given of their availability?

The present Supervisor for Mathematics & Science replied that pursuant to the policy notice was given to the parents that math textbooks were under consideration and that public notice was provided by the Public Information Officer. He also stated that the textbooks were made available for review to the public and again the public notice was provided by the Public Information Officer.

I asked the Public Information Officer when and where were the K-5 math textbooks that were being considered for approval made available for review to Stafford citizens and how was public notice given of their availability?

She told me that she searched her records and was unable to find any public notice or advertisement sent by her office regarding textbook adoptions for the K-5 math textbook in 2005. In fact, she stated that the public information office did not start producing the public notifications of textbook reviews/adoptions until 2006. She stated that prior that dat she was not sure how public notifications were handled, and opined that most likely it was done by the

instructional coordinator. The Public Information Officer provided a CC to the top officials in the school district in the email to me indicating that her office did not send out the notices. The Supervisor for Mathematics and Science, the Assistant Superintendent for Instruction, the Deputy Superintendent, and the Chief Academic Officer were all included in the CC reply from the Public Information Officer.

On July 22, 2008, I informed the school district that “there is probable cause to believe that the school district violated Virginia DOE Regulations by failing to provide notice to parents that textbooks under consideration were available for review.” After taking almost a month to reply, the Assistant Superintendent for Instruction sent the following response on August 18, 2008: “Parents were notified of textbooks under consideration. The practice at the time was for schools to communicate directly to their communities regarding notification of this type.”

That statement is contrary to the answer given by the present Supervisor for Mathematics & Science, who stated that the notice was provided by the public information officer. As noted above, I was able to determine that the public information officer did not provide any such notice. The school district knew the story that the Public Information Office sent out notice would not fly, because the top officials at the school district were informed that the Public Information Officer had told me that no notice was sent out from her office.

What did the school district do? After taking almost a month of careful consideration, and without any explanation or elaboration, it simply changed its answer and came up with a different response to the question of how notice to citizens was provided. The odd thing is that the school district knew that this second answer was contrary to the first, and yet it gave no explanation for the conflict in the responses. Even after I pointed out the difference in the answers, the school district did not explain the conflict in the answers.

I asked the Assistant Superintendent for Instruction to please provide me with a copy of the alleged public notices. On September 4, 2008, the Superintendent responded: “You have been previously advised that notices were the responsibility of individual schools to their respective communities. We did not maintain copies of these notices and, therefore, are unable to provide them.”

The school district has given different answers to the same question. It has not been able to produce the alleged notices. I, therefore, have reason to question whether notice to parents was truly provided. If public notice was not sent out that would be a violation of section 8VAC20-170-10.

If in fact the notices were sent out, the later destruction of the notice would be a violation of Section 008121 of Schedule 21 of the Virginian Records Retention Law. The Records Retention and Disposition General Schedule No. 21, by its terms, applies to “all public school systems.” Section 008121 of Schedule 21 requires that textbook adoption records be retained until the

textbook is superceded. http://www.lva.lib.va.us/whatwedo/records/sched_local/gs-21.pdf . I will leave this matter to the school board to investigate further and resolve.

Possible Violation of Virginia Administrative Code Section 8VAC20-230-30 for Not Following Proper Procedures When Considering a Non-approved Textbook

TERC Investigations 5th grade textbook was not chosen, however, it was considered as a proposed textbook during the selection process. The consideration by the adoption committees of the TERC Investigations 5th grade math textbook and its inclusion in the proposed Plan B seems to be contrary to Virginia Administrative Code Section 8VAC20-230-30 . Plan B has the following language in reference to TERC Investigations:

"Schools may choose Full Implementation of Investigations as the primary program at grades 3,4, and/or 5"

"Student practice books"

"Student workbooks"

The schools do not have the authority to adopt, of their own accord, the 5th Grade TERC Investigations because it is not a textbook approved by the Virginia DOE.

The State of Virginia has promulgated a regulation (8VAC20-230-30) that sets forth the procedure that must be followed when a school district wants to adopt a textbook that is not on the approved list of textbooks approved by the Virginia Department of Education.

Those regulations require, in pertinent part, the following, none of which were performed by the school district when they reviewed the unapproved 5th grade TERC Investigations:

"An evaluation committee shall be appointed by the school board to review and evaluate textbooks."

The evaluation committees were not appointed by the school board, they were appointed by the school district. That is important difference, since a committee of the school board must follow the meeting notice requirements found in FOIA § 2.2-3707, whereas a committee of the school district does not.

The DOE regulation 8VAC20-230-30 further requires:

"Criteria to be used by the evaluation committee in the review and assessment of textbooks must have the official approval of the local school board. The criteria, as approved, shall be on file in the office of the local school board."

As stated above, the criteria used by the school district did not have the official approval of the school board, and since the present Supervisor for Mathematics & Science indicated that he did not know if the criteria were on file with the school board, it is unlikely that they are on file.

According to 8VAC20-230-30, those two things must be done before the selection process begins. It is probable that they were not done. That seems to be contrary to 8VAC20-230-30.

However, the violation is not clear, since ultimately TERC Investigations was not selected as the fifth grade math textbook. It is the position of the school district that since TERC Investigations was not chosen, that there was no violation of section 8VAC20-230-30. It would seem that at the very least the school district attempted to violate the DOE Regulation. I will leave that issue for the school board to resolve.

Violation of Either FOIA Virginia FOIA § 2.2-3704 or Section 008121 of Schedule 21 of the Virginian Records Retention Law

The present Supervisor for Mathematics & Science informed me in an email that the schools invited parents and teachers to be a part of the textbook adoption committee. I asked the present Supervisor for Mathematics & Science for a copy of the invitation and information regarding to whom the invitations were sent. He responded via email: "I believe the principals and mathematics lead teachers invited them. The former Supervisor of Mathematics and Science led this adoption and I was unable to unearth all of the documents you have requested since I was not the Supervisor at the time."

It is not clear to me from what the present Supervisor for Mathematics & Science stated if the invitation was lost or destroyed. If the invitation was lost or destroyed, that would be a violation of Section 008121 of Schedule 21 of the Virginia records retention law, which requires textbook adoption records to be retained. The Records Retention and Disposition General Schedule No. 21, by its terms, applies to "all public school systems." Section 008121 of Schedule 21 requires that textbook adoption records be retained until the textbook is superceded. http://www.lva.lib.va.us/whatwedo/records/sched_local/gs-21.pdf.

If, however, the invitation was not lost or destroyed, it would be a violation of the Virginia FOIA law, not to have provided me with a copy of the invitation pursuant to my request. Virginia

FOIA § 2.2-3704, requires that “[a]ny public body that is subject to this chapter and that is the custodian of the requested records shall promptly, but in all cases within five working days of receiving a request, provide the requested records to the requester.” *Id.* If the record does not exist, the public body must tell the requester if “[t]he requested records could not be found or do not exist” *Id.*

In this case, the school district violated Virginia law. It is just a question of whether it was a violation of the Virginia FOIA or the Virginia Records Retention law. I will leave this matter for the school board to resolve.

School District Denies All Wrongdoing

I presented the school district with my conclusions and it denied each and every charge. The school district continues to maintain that it did nothing wrong. The Assistant Superintendent for Instruction stated: "SCPS was consistent with the process in School Board Textbook Policy § 6-46 in its selection of elementary textbook selection and adoption. The SCPS Supervisor of Mathematics and Science followed this policy in her adoption process."

He further stated: “The claim of controlling the outcome is unsubstantiated. The final selection decision was made by the textbook committee. The school district followed local textbook policy and state textbook regulation.”

The school district is so convinced that it did nothing wrong, it refuses to change future procedures to comply with the law. Although I pointed out that a DOE regulation requires that the school district use selection criteria provided by the local school board, the superintendent stated that it would remain its practice not to use criteria provided by the school board. The district instead would use the criteria provided by the state board of education. It seems that the school district is unrepentant and will continue to violate Virginia law.

I pointed out to the superintendent that DOE Regulation 8VAC20-170-10 states that the local school board is responsible for developing local criteria for selection, and that the board of education’s responsibility is limited to merely assisting the local school board by publishing guidelines for developing that criteria. I asked the superintendent why he believed that using criteria published by the state board of education is sufficient to comply with that DOE Regulation 8VAC20-170-10. The superintendent replied that “it is not my intention to continue to conduct research or engage in a dialogue concerning these issues. Unless you have a specific FOIA request, there appears to be little else I can do to respond to your interests.”