



COMMONWEALTH of VIRGINIA  
Department of Education

May 20, 2016

TO: Division Superintendents

FROM: Steven R. Staples, Superintendent of Public Instruction

**SUBJECT: Virginia Supreme Court Decision Regarding the Hiring of an Applicant  
Previously Convicted of a Felony**

The purpose of this memorandum is to notify division superintendents of a decision of the Supreme Court of Virginia, *Deilia Butler v. Fairfax County School Board* (Case No. 150150, December 17, 2015). In this appeal from the Circuit Court of Fairfax County, the Supreme Court considered “whether [Code § 22.1-296.1](#) prohibits a school board from hiring an applicant for employment who has previously been convicted of a felony.” In upholding the Circuit Court’s decision, the Supreme Court held that, because the appellant was convicted of a felony in 1992, “she could not fulfill the statutory condition precedent to employment in 2006 and the [Fairfax County School] Board lacked authority to hire her then. It likewise lacked authority to make a continuing contract with her in 2007. The continuing contract therefore is ultra vires and void ab initio [i.e., null and void].” In reaching the decision, the Supreme Court considered and dismissed the appellant’s arguments regarding statutory interpretation and estoppel.

In Virginia, the supervision of schools is the exclusive responsibility of local school boards. Accordingly, the Department of Education is providing information on the recent decision of the Supreme Court of Virginia solely to inform divisions to the decision, so that they may consult board counsel and other advisors on all matters related to the employment of persons in your school division with felony convictions.

If you have questions or need additional information regarding this memorandum, please contact Mrs. Patty S. Pitts, assistant superintendent for teacher education and licensure, at (804) 371-2522 or [patty.pitts@doe.virginia.gov](mailto:patty.pitts@doe.virginia.gov).

SRS/pp

c: Deans and Directors, Schools/Departments of Education  
Virginia Institutions of Higher Education  
Directors of Human Resources, Virginia School Divisions  
Virginia School Boards Association