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HOUSE BILL NO. 1179

Offered January 24, 2000

A BILL to amend and reenact §§ 22.1-277, 22.1-277.01, 22.1-277.02, 22.1-277.1, and 22.1-277.2 of the Code of Virginia, relating to school board disciplinary procedures.

Patron—Reid

Referred to Committee on Education

Be it enacted by the General Assembly of Virginia:

1. That §§ 22.1-277, 22.1-277.01, 22.1-277.02, 22.1-277.1, and 22.1-277.2 of the Code of Virginia are amended and reenacted as follows:

§ 22.1-277. Due process requirements for suspensions and expulsions.

A. As used in this chapter:

"Expulsion" means a disciplinary action removing a student from school attendance for one semester of the school year or longer.

"Long-term suspension" means a disciplinary action removing a student from school attendance for more than ten days.

"Short-term suspension" means a disciplinary action removing a student from school attendance for no more than ten days.

Pupils may be suspended or expelled from attendance at school for sufficient cause.

B. A pupil student may be short-term suspended for not more than ten school days by either the school principal, any assistant principal or in their absence any teacher. The principal, assistant principal, or teacher may suspend the pupil after giving the pupil oral or written notice of the charges against him and, if he denies them, an explanation of the facts as known to school personnel and an opportunity to present his version of what occurred., upon complying with the following conditions:

1. Providing the student with oral or written notice of the charges against him;

2. Providing, if the student denies such charges, an explanation of the facts as known to school personnel; and

3. Providing an opportunity for the student to present his version of what occurred to the principal.

In the case of any pupil student whose presence poses a continuing danger to persons or property, or whose presence is an ongoing threat of disruption, the pupil may be removed from school immediately by the principal and the notice, explanation of facts and opportunity to present his version of what occurred shall be given as soon as practicable thereafter.

Upon suspension of any pupil, the principal, assistant principal, or teacher responsible for such suspension shall report the facts of the case in writing to the division superintendent or his designee and the parent of the pupil suspended.

Upon a written request from the student or his parent within the timelines established in the school board's regulations, the division superintendent or his designee shall, as soon as possible, review forthwith the action taken by the principal, assistant principal, or teacher upon a petition for such review by any party in interest and confirm or disapprove such action based on an examination of the record of the pupil's behavior.

The decision of the division superintendent or his designee on a short-term suspension may be appealed to the school board or a committee thereof in accordance with regulations of the school board; however, the decision of the division superintendent or his designee shall be final if so prescribed by school board regulations.

C. A pupil may be long-term suspended from attendance at school for more than ten days after providing written notice to the pupil and his parent of the proposed action and the reasons therefor and of the right to a hearing before the school board, or a committee thereof, or the superintendent or his designee, in accordance with regulations of the school board. If the regulations provide for a hearing by the superintendent or his designee, the regulations shall also provide for an appeal of the decision to the full school board. Such appeal shall be decided by the school board within thirty days.

If the regulations provide for a hearing by a committee of the school board, the regulations shall also provide that such committee may confirm or disapprove the suspension of a student. Any such committee of the school board shall be composed of at least three members. If the committee's decision is not unanimous, the pupil or his parent may appeal the committee's decision to the full school board. Such appeal shall be decided by the school board within thirty days. by a school principal, upon complying with the following conditions:

1. Providing written notice to the student and his parent of the proposed action and the reasons

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HB1179

60 *therefor and of the right to a hearing;*

61 *2. Providing, upon a written request by the student or his parent within the timelines established in*
62 *the school board's regulations, a hearing before the superintendent or his designee;*

63 *3. Providing, upon a written request by the student or his parent within the timelines established in*
64 *the school board's regulations, for the appeal of the decision of the superintendent or his designee to a*
65 *hearing officer or a committee of the board or to the full board;*

66 *4. Providing written notification to the student and his parent when the decision of any hearing*
67 *officer or any committee of the school board on a long-term suspension shall be final; and*

68 *5. Providing, if, and only if, necessary under the school board's regulations, for an appeal of the*
69 *decision of the superintendent or his designee, any hearing officer or any committee of the board to the*
70 *full board.*

71 *The regulations of the school board may provide that the decision of any hearing officer or any*
72 *committee of the school board on a long-term suspension shall be deemed to the decision of the school*
73 *board and shall be final.*

74 *D. Pupils may be expelled from attendance at school after written notice to the pupil and his parent*
75 *of the proposed action and the reasons therefor and of the right to a hearing before the school board or*
76 *a committee thereof in accordance with regulations of the school board. If the regulations provide for a*
77 *hearing by a committee of the school board, the regulations shall also provide that such committee may*
78 *confirm or disapprove the expulsion of a student. Any such committee of the school board shall be*
79 *composed of at least three members. If the committee's decision is not unanimous, the pupil or his*
80 *parent may appeal the committee's decision to the full school board. Such appeal shall be decided by the*
81 *school board within thirty days: by the superintendent, a hearing officer, a committee of the school*
82 *board or the full school board, upon complying with the following conditions:*

83 *1. Providing written notice to the student and his parent of the proposed action and the reasons*
84 *therefor and of the right, upon written request of the student or his parent within the timelines*
85 *established in the school board's regulations, to a hearing;*

86 *2. Providing, upon written request of the student or his parent within the timelines established in the*
87 *school board's regulations, for the appeal of the decision to a hearing officer or a committee of the*
88 *board, as provided in the board's regulations;*

89 *3. Providing, upon written request of the student or his parent within the timelines established in the*
90 *school board's regulations, for the appeal of any hearing officer's decision to a committee of the board*
91 *or the full board, as provided in the board's regulations;*

92 *4. Notifying the student and his parent that the decision of a committee of the board, if authorized by*
93 *the board's regulations, shall be final unless the decision was not unanimous;*

94 *5. Providing, in any case in which the board's regulations provide for a committee of the board to*
95 *hear such cases, for a hearing before the full board of decisions that are not unanimous; and*

96 *6. Providing, in any case in which the board's regulations do not provide for appeals to hearing*
97 *officers or a committee of the board, for an appeal before the full board.*

98 *E. For the purposes of this section, the superintendent's designee shall be a (i) trained hearing officer*
99 *or (ii) professional employee within the administrative offices of the school division who reports directly*
100 *to the division superintendent and who is not a school-based instructional or administrative employee.*

101 *F. The authority provided in § 22.1-276.2 for teachers to remove students from their classes in*
102 *certain instances of disruptive behavior shall not be interpreted to affect the operation of this section.*

103 *G. A school board shall promulgate regulations establishing the responsibility for the hearings*
104 *required by this section. The school board's regulations may provide for (i) the employment or*
105 *appointment of one or more hearing officers, in compliance with subsection E above; (ii) the*
106 *establishment of a committee of the school board to hear appeals of disciplinary actions; or (iii) appeals*
107 *of long-term suspensions and expulsions before the full board. Any committee of the school board so*
108 *established shall consist of at least three members and shall always consist of an odd-number of*
109 *members. The members of any committee of the school board so established shall hold the disciplinary*
110 *actions reviewed by them confidential and shall not, if their decisions may be appealed to the full*
111 *board, discuss such actions with the other members of the school board.*

112 *§ 22.1-277.01. Expulsion of students under certain circumstances; Board of Education designated*
113 *agency; local school board application for assistance; reporting; exceptions.*

114 *A. In compliance with the federal Improving America's Schools Act of 1994 (Part F-"Gun-Free*
115 *Schools Act of 1994"), a school board shall expel from school attendance for a period of not less than*
116 *one year any student whom such school board has determined, in accordance with the procedures set*
117 *forth in § 22.1-277, to have brought a firearm onto school property or to a school-sponsored activity as*
118 *prohibited by § 18.2-308.1, or to have brought a firearm as defined in subsection D of this section on*
119 *school property or to a school-sponsored activity.*

120 *A school administrator, pursuant to school board policy, or a school board may, however, determine,*
121 *based on the facts of a particular situation, that special circumstances exist and no disciplinary action or*

another disciplinary action or another term of expulsion is appropriate. A school board may shall promulgate guidelines regulations to implement this section. The school board's regulations may include: (i) the criteria for determining what constitutes special circumstances; In addition, a school board may, by regulation, authorize; (ii) designation of the division superintendent or his designee to conduct a preliminary review of such cases to determine whether a disciplinary action other than expulsion is appropriate. Such regulations shall ensure that; (iii) establishment, if a determination is made that another disciplinary action is appropriate, any such of appropriate subsequent disciplinary action is actions to be taken in accordance with the procedures set forth in § 22.1-277; and (iv) authority for a school administrator to determine special circumstances.

B. The Board of Education is designated as the state education agency to carry out the provisions of the federal Improving America's Schools Act of 1994, and shall administer the funds to be appropriated to the Commonwealth under this act.

C. Each school board shall revise its standards of student conduct no later than three months after the date on which this act becomes effective as necessary. Local school boards requesting moneys apportioned to the Commonwealth through the federal Improving America's Schools Act of 1994 shall submit to the Department of Education an application requesting such assistance. Applications for assistance shall include:

1. Documentation that the local school board has adopted and implemented student conduct policies in compliance with this section;

2. A description of the circumstances pertaining to expulsions imposed under this section, including (i) the schools from which students were expelled under this section, (ii) the number of students expelled from each such school in the school division during the school year, and (iii) the types of firearms involved in the expulsions.

D. As used in this section:

"Destructive device" means (i) any explosive, incendiary, or poison gas, bomb, grenade, rocket having a propellant charge of more than four ounces, missile having an explosive or incendiary charge of more than one-quarter ounce, mine, or other similar device; (ii) any weapon, except a shotgun or a shotgun shell generally recognized as particularly suitable for sporting purposes, by whatever name known which will, or may be readily converted to, expel a projectile by the action of an explosive or other propellant, and which has any barrel with a bore of more than one-half inch in diameter; and (iii) any combination of parts either designed or intended for use in converting any device into any destructive device described in this subsection and from which a destructive device may be readily assembled. "Destructive device" shall not include any device which is not designed or redesigned for use as a weapon, or any device originally designed for use as a weapon and which is redesigned for use as a signaling, pyrotechnic, line-throwing, safety, or other similar device.

"Firearm" means any weapon prohibited on school property or at a school-sponsored activity pursuant to § 18.2-308.1, or (i) any weapon, including a starter gun, which will, or is designed or may readily be converted to, expel a projectile by the action of an explosive; (ii) the frame or receiver of any such weapon; (iii) any firearm muffler or firearm silencer; or (iv) any destructive device.

"One year" means 365 calendar days as required in federal regulations.

E. The exemptions set out in § 18.2-308 shall apply, mutatis mutandis, to the provisions of this section. The provisions of this section shall not apply to persons who possess such firearm or firearms as a part of the curriculum or other programs sponsored by the schools in the school division or any organization permitted by the school to use its premises or to any law-enforcement officer while engaged in his duties as such.

F. This section shall not be construed to diminish the authority of the Board of Education or the Governor concerning decisions on whether, or the extent to which, Virginia shall participate in the federal Improving America's Schools Act of 1994, or to diminish the Governor's authority to coordinate and provide policy direction on official communications between the Commonwealth and the United States government.

§ 22.1-277.02. Suspension and expulsion upon receipt of certain reports.

Any student for whom the division superintendent of the school division in which such student is enrolled has received a report pursuant to § 16.1-305.1 of an adjudication of delinquency or a conviction may be suspended or expelled from school attendance pursuant to upon compliance with the procedures required by § 22.1-277.

§ 22.1-277.1. Disciplinary authority of school boards under certain circumstances.

A. A school board may; in accordance with the procedures set forth in § 22.1-277, require any student to attend an alternative education program who has been (i) charged with an offense relating to the Commonwealth's laws, or with a violation of school board policies, on weapons, alcohol or drugs, or intentional injury to another person; (ii) found guilty or not innocent of a crime which resulted in or could have resulted in injury to others, or of a crime for which the disposition ordered by a court is

183 required to be disclosed to the superintendent of the school division pursuant to § 16.1-305.1; or (iii)
184 expelled pursuant to § 22.1-277.01 or § 22.1-277.02, ~~to attend an alternative education program,~~
185 ~~including, but not limited to, night school, adult education, or any other educational program designed to~~
186 ~~offer instruction to students for whom the regular program of instruction may be inappropriate.~~ A school
187 board may require such student to attend such programs regardless of where the crime occurred.

188 As used in this section, ~~the term "charged":~~

189 *"Alternative education" means any night school, adult education program, designated alternative*
190 *school or other educational program designed to serve students for whom the regular K through 12*
191 *programs of instruction may be inappropriate.*

192 *"Charged" means that a petition or warrant has been filed or is pending against a pupil student.*

193 B. A school board may adopt regulations authorizing the division superintendent or his designee to
194 require students to attend an alternative education program consistent with the provisions of subsection
195 A after (i) written notice to the student and his parent that the student will be required to attend an
196 alternative education program and (ii) notice of the opportunity for the student or his parent to
197 participate in a hearing to be conducted by the division superintendent or his designee regarding such
198 placement.

199 The decision of the superintendent or his designee regarding such alternative education placement
200 shall be final unless ~~altered by the school board, upon timely written petition, as the school board has~~
201 ~~established in regulation, by that, upon written request by the student or his parent, for a review of the~~
202 ~~record may be conducted by the school board and the placement decision overruled.~~

203 For the purposes of this section, the superintendent's designee shall be a (i) trained hearing officer or
204 (ii) professional employee within the administrative offices of the school division who reports directly to
205 the division superintendent and who is not a school-based instructional or administrative employee.

206 § 22.1-277.2. Admission of expelled students; authority to exclude under certain circumstances.

207 A. A student, who has been expelled or *long-term* suspended for more than thirty days from
208 attendance at school by a school board or *by the appropriate official or body of* a private school in this
209 Commonwealth or in another state or for whom admission has been withdrawn by a private school in
210 this Commonwealth or in another state for an offense in violation of school board *or private school*
211 policies related to (i) destruction of school property or privately-owned property while located on school
212 property, (ii) weapons, (iii) alcohol or drugs, or ~~for~~ (iv) the willful infliction of injury to another person,
213 may be excluded from attendance by a local school board in Virginia, *upon compliance with the*
214 *requirements of § 22.1-277.*

215 *Such student may be excluded from attendance by a local school board* regardless of whether such
216 student ~~has been~~ *was* admitted to another school division or private school in the Commonwealth or in
217 another state subsequent to such expulsion, suspension, or withdrawal of admission.

218 *An exclusion shall be* for no more than one year in the case of an expulsion or withdrawal of
219 admission and, in the case of a suspension of more than thirty days, for no longer than the duration of
220 such suspension; ~~upon a finding that the student presents a danger to the other students or staff of the~~
221 ~~school division after (i) written notice to the student and his parent that the student may be subject to~~
222 ~~exclusion, the reasons therefor, and, in the event of such exclusion, of the right to appeal the decision at~~
223 ~~a hearing before the school board or a committee thereof; and (ii) a review of the case has been~~
224 ~~conducted by the division superintendent or his designee and exclusion has been recommended. If the~~
225 ~~decision by the superintendent or his designee has been appealed to a committee of the school board,~~
226 ~~the student or his parent shall be provided written notice of the right to appeal the decision to the full~~
227 ~~board, which shall, within thirty days following any such hearing, in the case of an expulsion or~~
228 ~~withdrawal of admission and, in the case of a suspension of more than thirty days, within fifteen days~~
229 ~~following any such hearing, notify in writing the student or his parent of its decision.~~

230 B. In lieu of the procedures established in subsection A, a A school board may adopt regulations
231 providing that a student may be excluded from attendance after (i) written notice to the student and his
232 parent that the student may be subject to exclusion, including the reasons therefor, and notice of the
233 opportunity for the student or his parent to participate in a hearing to be conducted by the division
234 superintendent or his designee regarding such exclusion; and (ii) a hearing of the case has been
235 conducted by the division superintendent or his designee, and the decision has been to exclude the
236 student from attendance *for the appropriate period.*

237 The decision of the superintendent or his designee to exclude *the student* shall be final unless ~~altered~~
238 ~~by the school board, upon timely written petition, as has established in regulation that, of upon written~~
239 ~~request of the student so excluded or his parent, for a review of the record may be conducted by the~~
240 ~~school board and the exclusion decision overruled.~~

241 C. For the purposes of this section, the superintendent's designee shall be a (i) trained hearing officer
242 or (ii) professional employee within the administrative offices of the school division who reports directly
243 to the division superintendent and who is not a school-based instructional or administrative employee.

244 D. *Upon the expiration of the exclusion period for a long-term suspension, the school board may*

245 *authorize automatic admission of the student.* Upon the expiration of the exclusion period for an
246 *expulsion or withdrawal of admission,* which shall not be more than one year, the student may petition
247 the school board for admission; *however, the school board may, in its exclusion decision, provide that*
248 *the student will be automatically admitted upon completion of the exclusion period.* For the purposes of
249 this section, "one year" shall mean 365 calendar days *or, at the discretion of the school board, one*
250 *school year.*