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HOUSE BILL NO. 971

Offered January 9, 2002

Prefiled January 9, 2002

A BILL to amend and reenact §§ 22.1-277.06, 22.1-277.07, and 22.1-277.08 of the Code of Virginia, relating to zero tolerance policies in the public schools.

Patron—Jones, D.C.

Referred to Committee on Education

Be it enacted by the General Assembly of Virginia:

1. That §§ 22.1-277.06, 22.1-277.07, and 22.1-277.08 of the Code of Virginia are amended and reenacted as follows:

§ 22.1-277.06. Expulsions; procedures; readmission.

A. Pupils may be expelled from attendance at school after 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 in accordance with regulations of the school board.

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 expulsion 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.

The regulations shall also provide for subsequent confirmation or disapproval of the proposed expulsion by the school board, or a committee thereof, as may be provided in regulation, regardless of whether the pupil exercised the right to a hearing.

B. The written notice required by this section shall include notification of the length of the expulsion and shall provide information to the parent of the student concerning the availability of community-based educational, training, and intervention programs. Such notice shall state further whether or not the student is eligible to return to regular school attendance, or to attend an appropriate alternative education program approved by the school board, or an adult education program offered by the school division, during or upon the expiration of the expulsion, and the terms or conditions of such readmission. The costs of any community-based educational, training, or intervention program that is not a part of the educational program offered by the school division that the student may attend during his expulsion shall be borne by the parent of the student.

Nothing in this section shall be construed to prohibit the school board from permitting or requiring students expelled pursuant to this section to attend an alternative education program provided by the school board for the term of such expulsion.

If the school board determines that the student is ineligible to return to regular school attendance or to attend during the expulsion an alternative education program or an adult education program in the school division, the written notice shall also advise the parent of such student that the student may petition the school board for readmission to be effective one calendar year from the date of his expulsion, and of the conditions, if any, under which readmission may be granted.

School boards shall establish, by regulation, a schedule pursuant to which such students may apply and reapply for readmission to school. Such schedule shall be designed to ensure that the hearing and ruling on any initial petition for readmission, if granted, would enable the student to resume school attendance one calendar year from the date of the expulsion.

C. Recommendations for expulsion for actions ~~other than~~, including those specified in §§ 22.1-277.07 and 22.1-277.08, shall be based on consideration of the following factors:

1. The nature and seriousness of the violation;
2. The degree of danger to the school community;
3. The student's disciplinary history, including the seriousness and number of previous infractions;
4. The appropriateness and availability of an alternative education placement or program;
5. The student's age and grade level;
6. The results of any mental health, substance abuse, or special education assessments;
7. The student's attendance and academic records; and
8. Such other matters as he deems appropriate.

No decision to expel a student shall be reversed on the grounds that such factors were not considered.

~~Nothing in this subsection shall be deemed to preclude a school board from considering any of~~

59 *School boards shall include these factors as within the guidelines for "special circumstances" for*
60 *purposes to be promulgated pursuant to §§ 22.1-277.07 and 22.1-277.08.*

61 § 22.1-277.07. Expulsion of students under certain circumstances; exceptions.

62 A. In compliance with the federal Improving America's Schools Act of 1994 (Part F-Gun-Free
63 Schools Act of 1994), a school board shall expel from school attendance for a period of not less than
64 one year any student whom such school board has determined, in accordance with the procedures set
65 forth in this article, to have brought a firearm onto school property or to a school-sponsored activity as
66 prohibited by § 18.2-308.1, or to have brought a firearm as defined in subsection D on school property
67 or to a school-sponsored activity.

68 A school administrator, pursuant to school board policy, or a school board may, however, determine,
69 based on the facts of a particular situation, that special circumstances exist and no disciplinary action or
70 another disciplinary action or another term of expulsion is appropriate. A school board ~~may~~shall
71 promulgate guidelines for determining what constitutes special circumstances. *Such guidelines shall*
72 *include, but shall not be limited to, the factors set forth in subsection C of § 22.1-277.06.*

73 In addition, a school board may, by regulation, authorize the division superintendent or his designee
74 to conduct a preliminary review of such cases to determine whether a disciplinary action other than
75 expulsion is appropriate. Such regulations shall ensure that, if a determination is made that another
76 disciplinary action is appropriate, any such subsequent disciplinary action is to be taken in accordance
77 with the procedures set forth in this article.

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

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

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

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

92 D. As used in this section:

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

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

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

109 "School property" means any real property owned or leased by the school board or any vehicle
110 owned or leased by the school board or operated by or on behalf of the school board.

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

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

§ 22.1-277.08. Expulsion of students for certain drug offenses.

A. School boards shall expel from school attendance any student whom such school board has determined, in accordance with the procedures set forth in this article, to have brought a controlled substance, imitation controlled substance, or marijuana as defined in § 18.2-247 onto school property or to a school-sponsored activity. A school board may, however, determine, based on the facts of the particular case, that special circumstances exist and another disciplinary action is appropriate. *A school board shall promulgate guidelines for determining what constitutes special circumstances. Such guidelines shall include, but shall not be limited to, the factors set forth in subsection C of § 22.1-277.06.*

In addition, a school board may, by regulation, authorize 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, if a determination is made that another disciplinary action is appropriate, any such subsequent disciplinary action is to be taken in accordance with the procedures set forth in this article.

B. Each school board shall revise its standards of student conduct to incorporate the requirements of this section no later than three months after the date on which this act becomes effective.