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**HOUSE BILL NO. 808**

Offered January 9, 2008

Prefiled January 8, 2008

*A BILL to amend and reenact §§ 22.1-214 and 22.1-214.2 of the Code of Virginia, relating to parental consent for any reduction or termination of special education services.*

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 Patron—Englin
 

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 Referred to Committee on Education
 

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**Be it enacted by the General Assembly of Virginia:****1. That §§ 22.1-214 and 22.1-214.2 of the Code of Virginia are amended and reenacted as follows:**

§ 22.1-214. Board to prepare special education program for children with disabilities.

A. The Board of Education shall prepare and supervise the implementation by each school division of a program of special education designed to educate and train children with disabilities between the ages defined in § 22.1-213 and may prepare and place in operation such program for such individuals of other ages. The program developed by the Board of Education shall be designed to ensure that all children with disabilities have available to them a free and appropriate education, including specially designed instruction to meet the unique needs of such children. The program shall require (i) that the hearing of each disabled child be tested prior to placement in a special education program and (ii) that a complete audiological assessment, including tests which will assess inner and middle ear functioning, be performed on each child who is hearing impaired or who fails the test required in clause (i). The school boards of the several school divisions, the Department for the Blind and Vision Impaired, the Department for the Deaf and Hard-of-Hearing, the Department of Health and other state and local agencies which can or may be able to assist in providing educational and related services shall assist and cooperate with the Board of Education in the development of such program.

B. The Board of Education shall prescribe procedures to afford due process to children with disabilities and their parents or guardians and to school divisions in resolving disputes as to program placements, individualized education programs, tuition eligibility and other matters as defined in state or federal statutes or regulations. These procedures shall encourage the use of mediation as an informal means of resolving such disputes. Mediation shall not, however, be used to deny or delay the due process rights of parents or guardians. The procedures shall require that all testimony be given under oath or affirmation administered by the hearing officer.

C. The Board of Education may provide for final decisions to be made by a hearing officer. The parents and the school division shall have the right to be represented by legal counsel or other representative before such hearing officer without being in violation of the provisions of § 54.1-3904.

D. Any party aggrieved by the findings and decision made pursuant to the procedures prescribed pursuant to subsections B and C of this section may bring a civil action in the circuit court for the jurisdiction in which the school division is located. In any such action the court shall receive the records of the administrative proceedings, shall hear additional evidence at the request of a party, and basing its decision on the preponderance of the evidence, shall grant such relief as the court determines appropriate.

E. *Informed parental consent shall be required prior to conducting any reevaluation of a child with a disability to determine the child's continued eligibility for special education and related services, unless the local school division can demonstrate that it has taken reasonable measures to obtain such consent and the child's parent has failed to respond. Further, informed parental consent shall be required prior to termination of services or a finding that the child is no longer eligible for special education and related services.*

F. Whenever the Board of Education, in its discretion, determines that a school division fails to establish and maintain programs of free and appropriate public education which comply with regulations established by the Board, the Board may withhold all special education moneys from the school division and may use the payments which would have been available to such school division to provide special education, directly or by contract, to eligible children with disabilities in such manner as the Board considers appropriate.

FG. The Board of Education shall supervise educational programs for children with disabilities by other public agencies and shall ensure that the identification, evaluation and placement of children with disabilities and youth in education programs by other public agencies, as appropriate, are consistent with the provisions of the Board of Education's special education regulations.

GH. The Board of Education shall prescribe regulations to provide a range of assessment procedures

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59 for the evaluation of children with disabilities. These regulations shall include provision for parents to  
60 participate, if they so request, in the consideration of the assessment components to be used. However,  
61 such regulations shall not require any local school board to exceed the requirements of federal law or  
62 regulations for the identification and evaluation of children with disabilities.

63 § 22.1-214.2. Definition of "supervise" as related to educational programs provided for or by  
64 Department of Mental Health, Mental Retardation and Substance Abuse Services.

65 For the purposes of subsection ~~FG~~ of § 22.1-214 as related to the educational programs provided for  
66 or by the Department of Mental Health, Mental Retardation and Substance Abuse Services, "supervise"  
67 shall mean providing active support in (i) designing mechanisms for maintaining constant direct contact  
68 and the sharing of ideas, approaches and innovations between the Department of Mental Health, Mental  
69 Retardation and Substance Abuse Services and the facility staff responsible for providing educational  
70 services; (ii) providing consistent oversight, with particular attention to the mental health programs, to  
71 ensure that the availability of educational resources and the distribution of funds clearly reflect the needs  
72 of the different student populations residing in the various facilities; (iii) developing guidelines, in  
73 cooperation with the Department of Mental Health, Mental Retardation and Substance Abuse Services  
74 for the evaluation of the performance of the education directors or other education supervisors employed  
75 by the Department of Mental Health, Mental Retardation and Substance Abuse Services; (iv) developing  
76 and implementing, in cooperation with the Department of Mental Health, Mental Retardation and  
77 Substance Abuse Services, programs to ensure that the educational and treatment needs of dually  
78 diagnosed children in state institutions are met; (v) ensuring that the expertise of the Department of  
79 Education is utilized by providing technical assistance to the education programs provided for or by the  
80 Department of Mental Health, Mental Retardation and Substance Abuse Services in the areas of  
81 selection and acquisition of educational materials, curriculum development including career and technical  
82 education, when appropriate, and applications for federal grants.