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HOUSE BILL NO. 2104

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Appropriations
on February 4, 2009)

(Patrons Prior to Substitute—Delegates Janis and O'Bannon [HB 1985])

A BILL to amend the Code of Virginia by adding in Title 22.1 a chapter numbered 16.1, consisting of sections numbered 22.1-335.1 through 22.1-335.8, relating to the Students with Disabilities Tuition Assistance Grant Program.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Title 22.1 a chapter numbered 16.1, consisting of sections numbered 22.1-335.1 through 22.1-335.8, as follows:

CHAPTER 16.1.

STUDENTS WITH DISABILITIES

TUITION ASSISTANCE GRANT PROGRAM.

§ 22.1-335.1. Students with Disabilities Tuition Assistance Grant Program; established.

A. There is hereby established the Students with Disabilities Tuition Assistance Grant Program (Grant Program), to provide tuition assistance for attendance at an eligible private school, as defined in § 22.1-335.4, of the parent's choice for eligible students for whom an individualized educational program has been written in accordance with the federal Individuals with Disabilities Education Act (IDEA) as amended, regulations promulgated pursuant to IDEA, and regulations of the Board of Education.

B. For the purposes of this chapter:

"Autism spectrum disorder" means any pervasive developmental disorder, including (i) autistic disorder, (ii) Asperger's Syndrome, (iii) Rett syndrome, (iv) childhood disintegrative disorder, or (v) Pervasive Developmental Disorder - Not Otherwise Specified, as defined in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders of the American Psychiatric Association.

"Eligible student" means any K-12 student as defined by the Board of Education in its Regulations Governing Special Education Programs for Children with Disabilities in Virginia who is diagnosed with an autism spectrum disorder.

§ 22.1-335.2. Grant Program; eligibility.

A. The parent of an eligible student, as defined in § 22.1-335.1, who has demonstrated substantial unmet academic or developmental progress in a public school may request of the Superintendent of Public Instruction a tuition assistance grant for the student to enroll in and attend an eligible private school, as defined in § 22.1-335.4. When such a request is received by the Superintendent of Public Instruction, an eligible private school shall receive a tuition assistance grant on behalf of the requesting student, in accordance with this section, upon satisfaction of the following conditions:

1. The student has attended a public school in the Commonwealth and has received special education services from a public school for at least one year prior to the request of a grant;

2. Prior to the beginning of the initial school year for which the grant is requested, the parent has obtained acceptance for admission of the student to a private school that is eligible to participate in the Grant Program pursuant to § 22.1-335.4;

3. The parent has executed and submitted to the division superintendent a written statement acknowledging that the public school has implemented an individualized educational program that is reasonably calculated to provide educational benefit in accordance with the federal IDEA as amended, regulations promulgated pursuant to IDEA, and regulations of the Board of Education; and

4. The parent has notified the division superintendent of his request to the Superintendent of Public Instruction for a tuition assistance grant at least 60 days prior to the beginning of the school year in which the first grant payment is sought. Such notice shall be transmitted through a communication sent directly to the division superintendent either in writing or through electronic means.

B. The grant may be awarded annually until the student returns to a public school or is no longer eligible for special education services. However, at any time, the student's parent may remove the student from the private school of attendance and place the student in another private school that is eligible for the Grant Program pursuant to § 22.1-335.4. The parents of a student receiving a grant shall provide transportation for the student, at the parent's expense, to and from the private school and school-related activities.

§ 22.1-335.3. School division; obligations.

A. Upon receiving a notification from a parent concerning a request for a grant, a division superintendent shall in a timely fashion notify the parent of the student of all options of which the school division is aware and that are available pursuant to this chapter and may offer the student's

parent an opportunity to enroll the student in another public school or program within the division.

B. The parent may choose, as an alternative, to request enrollment of his student in a division where the student is not a resident and transport the student at the parent's expense to a public school in an adjacent school division that has available space and an existing program with services required by the student's individualized educational program. Any school division agreeing to enroll a student under the provisions of this subsection shall not charge tuition; however, the school division shall report the student in fall membership and shall receive payment for the student in accordance with the provisions of the appropriation act.

§ 22.1-335.4. Private schools; eligibility.

Any nonsectarian Virginia private school may be eligible to participate in the Grant Program so long as such school:

1. Holds a current unrestricted license to operate as a school for students with disabilities pursuant to Chapter 16 (§ 22.1-319 et seq.);

2. Employs teachers having qualifications in compliance with regulations promulgated by the Board of Education pursuant to Chapter 16 (§ 22.1-319 et seq.);

3. Demonstrates fiscal soundness by having been in operation for at least one year or by having provided the Board of Education with a (i) statement by a certified public accountant confirming that the private school is insured and the owner or owners have sufficient capital or credit to operate the school for the upcoming year serving the number of students anticipated with expected revenues from tuition and other sources that may be reasonably expected; or (ii) surety bond or letter of credit for the amount equal to the grant funds for any quarter;

4. Complies with the antidiscrimination provisions of 42 U.S.C. § 2000d;

5. Meets state and local health and safety laws and codes;

6. Applies to the Board of Education to receive tuition assistance grants for the education of students with autism, specifying grade levels and services that the private school has available for students with autism who are participating in the program;

7. Adheres to the tenets of its published disciplinary procedures prior to expulsion of a student admitted to the school in accordance with the provisions of this chapter;

8. Agrees to provide the services prescribed in each participating student's individualized education program; and

9. Agrees to retain any student enrolled pursuant to the grant until completion of the relevant school year, unless the student is unable to attend because of illness or unless the school excuses the student for other good cause, as defined in the Board of Education regulations.

§ 22.1-335.5. Program participants; obligations.

A. Any parent who requests a grant on behalf of an eligible student is exercising the parental option of placing the student in a private school and thus shall select the private school and apply for the admission of the student.

B. The parent shall request the grant from the Superintendent of Public Instruction at least 60 days prior to the beginning of the school year in which the first grant payment is sought.

C. The parent of a student participating in the Grant Program shall comply fully with the private school's parental involvement requirements, unless excused by the school for illness or other good cause.

D. The parent may request that the student participating in the Grant Program take relevant Standards of Learning tests. However, the parent shall be responsible for transporting the student to the assessment site designated by the school division. The student's scores on such tests and assessments shall not be counted in the accreditation of any school in the school division.

E. Grants awarded pursuant to this chapter shall be disbursed pursuant to the provisions of the appropriation act.

F. Failure to comply with the provisions of this chapter shall constitute a forfeiture of the grant.

§ 22.1-335.6. Funding.

The amount of the grant for an eligible student with disabilities shall be calculated in accordance with the appropriation act and shall not exceed the average state share of the Standards of Quality basic aid per pupil expenditure.

§ 22.1-335.7. Liability.

Nothing in this chapter shall give rise to any liability on the part of the Commonwealth or any local school board based on the award or use of an award from the Grant Program.

§ 22.1-335.8. Board of Education to promulgate regulations.

The Board of Education shall promulgate regulations pursuant to the Administrative Process Act (§ 2.2-4000 et seq.) to administer the Grant Program and aid local school divisions and private schools in the Grant Program's implementation. The Board's regulations shall include, but not be limited to:

1. Contract provisions requiring private schools that enroll Grant Program participants to agree, prior to receipt of the grant on behalf of the student, to enroll and retain the student until completion of

122 *the relevant school year, unless the student is unable to attend because of illness or the school excuses*
123 *the student for other good cause as defined in the Board's regulations.*

124 *2. A requirement that the private school notify the division superintendent of the school division*
125 *where the student resides of the effective date on which the student's attendance will be terminated or*
126 *the date on which the student was excused, and that the private school shall reimburse the*
127 *Commonwealth for the grant. The amount of the reimbursement shall be prorated according to the time*
128 *remaining in the school year.*

129 *3. A process for verifying the student's initial admission and continued enrollment and attendance at*
130 *the private school.*

131 *4. A process for determining a student's eligibility and approving grants in order to ensure that each*
132 *participating student meets the statutory and regulatory requirements.*

133 **2. That the Board shall promulgate regulations to implement the provisions of this act to be**
134 **effective within 280 days of its enactment.**