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**HOUSE BILL NO. 1061**

Offered January 13, 2016

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*A BILL to amend and reenact §§ 22.1-254, 22.1-277, 22.1-277.08, and 22.1-277.2:1 of the Code of Virginia, relating to the expulsion of students and the referral of students to a local law-enforcement agency.*

Patrons—Bagby, Boysko, Hester, Lindsey, McClellan, McQuinn, Price and Simon

Referred to Committee on Education

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 22.1-254, 22.1-277, 22.1-277.08, and 22.1-277.2:1 of the Code of Virginia are amended and reenacted as follows:**

**§ 22.1-254. Compulsory attendance required; excuses and waivers; alternative education program attendance; exemptions from article.**

A. Except as otherwise provided in this article, every parent, guardian, or other person in the Commonwealth having control or charge of any child who will have reached the fifth birthday on or before September 30 of any school year and who has not passed the eighteenth birthday shall, during the period of each year the public schools are in session and for the same number of days and hours per day as the public schools, send such child to a public school or to a private, denominational, or parochial school or have such child taught by a tutor or teacher of qualifications prescribed by the Board of Education and approved by the division superintendent, or provide for home instruction of such child as described in § 22.1-254.1.

As prescribed in the regulations of the Board of Education, the requirements of this section may also be satisfied by sending a child to an alternative program of study or work/study offered by a public, private, denominational, or parochial school or by a public or private degree-granting institution of higher education. Further, in the case of any five-year-old child who is subject to the provisions of this subsection, the requirements of this section may be alternatively satisfied by sending the child to any public educational pre-kindergarten program, including a Head Start program, or in a private, denominational, or parochial educational pre-kindergarten program.

Instruction in the home of a child or children by the parent, guardian, or other person having control or charge of such child or children shall not be classified or defined as a private, denominational or parochial school.

The requirements of this section shall apply to (i) any child in the custody of the Department of Juvenile Justice or the Department of Corrections who has not passed his eighteenth birthday and (ii) any child whom the division superintendent has required to take a special program of prevention, intervention, or remediation as provided in subsection C of § 22.1-253.13:1 and in § 22.1-254.01. The requirements of this section shall not apply to (a) any person 16 through 18 years of age who is housed in an adult correctional facility when such person is actively pursuing the achievement of a passing score on a high school equivalency examination approved by the Board of Education but is not enrolled in an individual student alternative education plan pursuant to subsection E, and (b) any child who has obtained a high school diploma or its equivalent, a certificate of completion, or has achieved a passing score on a high school equivalency examination approved by the Board of Education, or who has otherwise complied with compulsory school attendance requirements as set forth in this article.

B. A school board shall excuse from attendance at school:

1. Any pupil who, together with his parents, by reason of bona fide religious training or belief is conscientiously opposed to attendance at school. For purposes of this subdivision, "bona fide religious training or belief" does not include essentially political, sociological or philosophical views or a merely personal moral code; and

2. On the recommendation of the juvenile and domestic relations district court of the county or city in which the pupil resides and for such period of time as the court deems appropriate, any pupil who, together with his parents, is opposed to attendance at a school by reason of concern for such pupil's health, as verified by competent medical evidence, or by reason of such pupil's reasonable apprehension for personal safety when such concern or apprehension in that pupil's specific case is determined by the court, upon consideration of the recommendation of the principal and division superintendent, to be justified.

C. Each local school board shall develop policies for excusing students who are absent by reason of observance of a religious holiday. Such policies shall ensure that a student shall not be deprived of any

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59 award or of eligibility or opportunity to compete for any award, or of the right to take an alternate test  
60 or examination, for any which he missed by reason of such absence, if the absence is verified in a  
61 manner acceptable to the school board.

62 D. A school board may excuse from attendance at school:

63 1. On recommendation of the principal and the division superintendent and with the written consent  
64 of the parent or guardian, any pupil who the school board determines, in accordance with regulations of  
65 the Board of Education, cannot benefit from education at such school; or

66 2. On recommendation of the juvenile and domestic relations district court of the county or city in  
67 which the pupil resides, any pupil who, in the judgment of such court, cannot benefit from education at  
68 such school.

69 E. Local school boards may allow the requirements of subsection A to be met under the following  
70 conditions:

71 For a student who is at least 16 years of age, there shall be a meeting of the student, the student's  
72 parents, and the principal or his designee of the school in which the student is enrolled in which an  
73 individual student alternative education plan shall be developed in conformity with guidelines prescribed  
74 by the Board, which plan must include:

75 a. Career guidance counseling;

76 b. Mandatory enrollment and attendance in a preparatory program for passing a high school  
77 equivalency examination approved by the Board of Education or other alternative education program  
78 approved by the local school board with attendance requirements that provide for reporting of student  
79 attendance by the chief administrator of such preparatory program or approved alternative education  
80 program to such principal or his designee;

81 c. Mandatory enrollment in a program to earn a Board of Education-approved career and technical  
82 education credential, such as the successful completion of an industry certification, a state licensure  
83 examination, a national occupational competency assessment, or the Virginia workplace readiness skills  
84 assessment;

85 d. Successful completion of the course in economics and personal finance required to earn a Board  
86 of Education-approved high school diploma;

87 e. Counseling on the economic impact of failing to complete high school; and

88 f. Procedures for reenrollment to comply with the requirements of subsection A.

89 A student for whom an individual student alternative education plan has been granted pursuant to this  
90 subsection and who fails to comply with the conditions of such plan shall be in violation of the  
91 compulsory school attendance law, and the division superintendent or attendance officer of the school  
92 division in which such student was last enrolled shall seek immediate compliance with the compulsory  
93 school attendance law as set forth in this article.

94 Students enrolled with an individual student alternative education plan shall be counted in the  
95 average daily membership of the school division.

96 F. A school board may, in accordance with the procedures set forth in Article 3 (§ 22.1-276.01 et  
97 seq.) of Chapter 14 and upon a finding that a school-age child has been (i) charged with an offense  
98 relating to the Commonwealth's laws, or with a violation of school board policies, on weapons, alcohol  
99 or drugs, or intentional injury to another person; (ii) found guilty or not innocent of a crime that  
100 resulted in or could have resulted in injury to others, or of an offense that is required to be disclosed to  
101 the superintendent of the school division pursuant to subsection G of § 16.1-260; (iii) suspended  
102 pursuant to § 22.1-277.05; or (iv) expelled from school attendance pursuant to § 22.1-277.06 or  
103 22.1-277.07 or subsection B C of § 22.1-277, require the child to attend an alternative education  
104 program as provided in § 22.1-209.1:2 or 22.1-277.2:1.

105 G. Whenever a court orders any pupil into an alternative education program, including a program  
106 preparing students for a high school equivalency examination approved by the Board of Education,  
107 offered in the public schools, the local school board of the school division in which the program is  
108 offered shall determine the appropriate alternative education placement of the pupil, regardless of  
109 whether the pupil attends the public schools it supervises or resides within its school division.

110 The juvenile and domestic relations district court of the county or city in which a pupil resides or in  
111 which charges are pending against a pupil, or any court in which charges are pending against a pupil,  
112 may require the pupil who has been charged with (i) a crime that resulted in or could have resulted in  
113 injury to others, (ii) a violation of Article 1 (§ 18.2-77 et seq.) of Chapter 5 of Title 18.2, or (iii) any  
114 offense related to possession or distribution of any Schedule I, II, or III controlled substances to attend  
115 an alternative education program, including, but not limited to, night school, adult education, or any  
116 other education program designed to offer instruction to students for whom the regular program of  
117 instruction may be inappropriate.

118 This subsection shall not be construed to limit the authority of school boards to expel, suspend, or  
119 exclude students, as provided in §§ 22.1-277.04, 22.1-277.05, 22.1-277.06, 22.1-277.07, and 22.1-277.2.  
120 As used in this subsection, the term "charged" means that a petition or warrant has been filed or is

pending against a pupil.

H. Within one calendar month of the opening of school, each school board shall send to the parents or guardian of each student enrolled in the division a copy of the compulsory school attendance law and the enforcement procedures and policies established by the school board.

I. The provisions of this article shall not apply to:

1. Children suffering from contagious or infectious diseases while suffering from such diseases;

2. Children whose immunizations against communicable diseases have not been completed as provided in § 22.1-271.2;

3. Children under 10 years of age who live more than two miles from a public school unless public transportation is provided within one mile of the place where such children live;

4. Children between the ages of 10 and 17, inclusive, who live more than 2.5 miles from a public school unless public transportation is provided within 1.5 miles of the place where such children live; and

5. Children excused pursuant to subsections B and D.

Further, any child who will not have reached his sixth birthday on or before September 30 of each school year whose parent or guardian notifies the appropriate school board that he does not wish the child to attend school until the following year because the child, in the opinion of the parent or guardian, is not mentally, physically, or emotionally prepared to attend school, may delay the child's attendance for one year.

The distances specified in subdivisions 3 and 4 of this subsection shall be measured or determined from the child's residence to the entrance to the school grounds or to the school bus stop nearest the entrance to the residence of such children by the nearest practical routes which are usable for walking or riding. Disease shall be established by the certificate of a reputable practicing physician in accordance with regulations adopted by the Board of Education.

**§ 22.1-277. Suspensions, expulsions, and referrals of students generally.**

A. ~~Pupils~~ *Students* may be suspended or expelled from attendance at school for sufficient cause; however, ~~in~~ *In no cases may case shall* sufficient cause for ~~suspensions~~ *suspension* include only instances of truancy.

B. *Except as otherwise provided in § 22.1-277.07, students may be expelled from attendance at school or referred to a local law-enforcement agency for sufficient cause but only after all feasible alternatives to such expulsion or referral have been considered.*

C. 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 for an offense listed in subsection G of § 16.1-260 may be suspended or expelled from school attendance pursuant to this article.

~~C.~~ D. The authority provided in § 22.1-276.2 for teachers to remove students from their classes in certain instances of disruptive behavior shall not be interpreted to affect the operation of § 22.1-277.04, 22.1-277.05, or 22.1-277.06.

**§ 22.1-277.2:1. Disciplinary authority of school boards under certain circumstances; alternative education program.**

A. A school board may, in accordance with the procedures set forth in this article, require any student 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, or with an offense that is required to be disclosed to the superintendent of the school division pursuant to subsection G of § 16.1-260; (ii) found guilty or not innocent of an offense relating to the Commonwealth's laws on weapons, alcohol, or drugs, or of a crime that resulted in or could have resulted in injury to others, or of an offense that is required to be disclosed to the superintendent of the school division pursuant to subsection G of § 16.1-260; (iii) found to have committed a serious offense or repeated offenses in violation of school board policies; (iv) suspended pursuant to § 22.1-277.05; or (v) expelled pursuant to § 22.1-277.06, 22.1-277.07, or 22.1-277.08, or subsection ~~B~~ C of § 22.1-277, to attend an alternative education program. A school board may require such student to attend such programs regardless of where the crime occurred. School boards may require any student who has been found, in accordance with the procedures set forth in this article, to have been in possession of, or under the influence of, drugs or alcohol on a school bus, on school property, or at a school-sponsored activity in violation of school board policies, to undergo evaluation for drug or alcohol abuse, or both, and, if recommended by the evaluator and with the consent of the student's parent, to participate in a treatment program.

As used in this section, the term "charged" means that a petition or warrant has been filed or is pending against a pupil.

B. A school board may adopt regulations authorizing the division superintendent or his designee to require students to attend an alternative education program consistent with the provisions of subsection

182 A after (i) written notice to the student and his parent that the student will be required to attend an  
183 alternative education program and (ii) notice of the opportunity for the student or his parent to  
184 participate in a hearing to be conducted by the division superintendent or his designee regarding such  
185 placement. The decision of the superintendent or his designee regarding such alternative education  
186 placement shall be final unless altered by the school board, upon timely written petition, as established  
187 in regulation, by the student or his parent, for a review of the record by the school board.

188 C. A school board may adopt regulations authorizing the principal or his designee to impose a  
189 short-term suspension, pursuant to § 22.1-277.04, upon a student who has been charged with an offense  
190 involving intentional injury enumerated in subsection G of § 16.1-260, to another student in the same  
191 school pending a decision as to whether to require that such student attend an alternative education  
192 program.

193 **§ 22.1-277.08. Expulsion of students for certain drug offenses.**

194 A. School boards ~~shall~~ *may, consistent with subsection B of § 22.1-277*, expel from school  
195 attendance any student whom such school board has determined, in accordance with the procedures set  
196 forth in this article, to have brought a controlled substance, imitation controlled substance, or marijuana  
197 as defined in § 18.2-247 onto school property or to a school-sponsored activity. A school administrator,  
198 pursuant to school board policy, or a school board may, however, determine, based on the facts of a  
199 particular situation, that special circumstances exist and no disciplinary action or another disciplinary  
200 action or another term of expulsion is appropriate. A school board may, by regulation, authorize the  
201 division superintendent or his designee to conduct a preliminary review of such cases to determine  
202 whether a disciplinary action other than expulsion is appropriate. Such regulations shall ensure that, if a  
203 determination is made that another disciplinary action is appropriate, any such subsequent disciplinary  
204 action is to be taken in accordance with the procedures set forth in this article. Nothing in this section  
205 shall be construed to require a student's expulsion regardless of the facts of the particular situation.

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