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SENATE BILL NO. 538

Offered January 13, 2016

Prefiled January 13, 2016

A BILL to amend and reenact § 22.1-253.13:3 of the Code of Virginia, relating to students with limited English proficiency; alternative to the eleventh grade Standards of Learning end-of-course English reading assessment.

Patrons—Surovell, Barker and Ebbin; Delegate: Krizek

Referred to Committee on Education and Health

Be it enacted by the General Assembly of Virginia:

1. That § 22.1-253.13:3 of the Code of Virginia is amended and reenacted as follows:

§ 22.1-253.13:3. Standard 3. Accreditation, other standards, assessments, and releases from state regulations.

A. The Board of Education shall promulgate regulations establishing standards for accreditation pursuant to the Administrative Process Act (§ 2.2-4000 et seq.), which shall include, but not be limited to, student outcome measures, requirements and guidelines for instructional programs and for the integration of educational technology into such instructional programs, administrative and instructional staffing levels and positions, including staff positions for supporting educational technology, student services, auxiliary education programs such as library and media services, course and credit requirements for graduation from high school, community relations, and the philosophy, goals, and objectives of public education in Virginia.

The Board of Education shall promulgate regulations establishing standards for accreditation of public virtual schools under the authority of the local school board that enroll students full time.

The Board shall review annually the accreditation status of all schools in the Commonwealth. However, the Board may review the accreditation status of a school once every three years if the school has been fully accredited for three consecutive years. Upon such triennial review, the Board shall review the accreditation status of the school for each individual year within that triennial review period. If the Board finds that the school would have been accredited every year of that triennial review period the Board may accredit the school for another three years. The Board shall review the accreditation status of any school that (i) in any individual year within the triennial review period would have failed to achieve full accreditation or (ii) in the previous year has had an adjustment of its boundaries by a school board pursuant to subdivision 4 of § 22.1-79 that affects at least 10 percent of the student population of the school.

Each local school board shall maintain schools that are fully accredited pursuant to the standards for accreditation as prescribed by the Board of Education. Each local school board shall review the accreditation status of all schools in the local school division annually in public session. Within the time specified by the Board of Education, each school board shall submit corrective action plans for any schools within its school division that have been designated as not meeting the standards as approved by the Board.

When the Board of Education has obtained evidence through the school academic review process that the failure of schools within a division to achieve full accreditation status is related to division level failure to implement the Standards of Quality, the Board may require a division level academic review. After the conduct of such review and within the time specified by the Board of Education, each school board shall submit for approval by the Board a corrective action plan, consistent with criteria established by the Board and setting forth specific actions and a schedule designed to ensure that schools within its school division achieve full accreditation status. Such corrective action plans shall be part of the relevant school division's comprehensive plan pursuant to § 22.1-253.13:6.

With such funds as are appropriated or otherwise received for this purpose, the Board shall adopt and implement an academic review process, to be conducted by the Department of Education, to assist schools that are accredited with warning. The Department shall forward a report of each academic review to the relevant local school board, and such school board shall report the results of such academic review and the required annual progress reports in public session. The local school board shall implement any actions identified through the academic review and utilize them for improvement planning.

B. The Superintendent of Public Instruction shall develop and the Board of Education shall approve criteria for determining and recognizing educational performance in the Commonwealth's public school divisions and schools. Such criteria, when approved, shall become an integral part of the accreditation

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59 process and shall include student outcome measurements. The Superintendent of Public Instruction shall
60 annually identify to the Board those school divisions and schools that exceed or do not meet the
61 approved criteria. Such identification shall include an analysis of the strengths and weaknesses of public
62 education programs in the various school divisions in Virginia and recommendations to the General
63 Assembly for further enhancing student learning uniformly across the Commonwealth. In recognizing
64 educational performance in the school divisions, the Board shall include consideration of special school
65 division accomplishments, such as numbers of dual enrollments and students in Advanced Placement and
66 International Baccalaureate courses, and participation in academic year Governor's Schools.

67 The Superintendent of Public Instruction shall assist local school boards in the implementation of
68 action plans for increasing educational performance in those school divisions and schools that are
69 identified as not meeting the approved criteria. The Superintendent of Public Instruction shall monitor
70 the implementation of and report to the Board of Education on the effectiveness of the corrective actions
71 taken to improve the educational performance in such school divisions and schools.

72 C. With such funds as are available for this purpose, the Board of Education shall prescribe
73 assessment methods to determine the level of achievement of the Standards of Learning objectives by all
74 students. Such assessments shall evaluate knowledge, application of knowledge, critical thinking, and
75 skills related to the Standards of Learning being assessed. The Board shall, with the assistance of
76 independent testing experts, conduct a regular analysis and validation process for these assessments. The
77 Department of Education shall make available to school divisions Standards of Learning assessments
78 typically administered by the middle and high schools by December 1 of the school year in which such
79 assessments are to be administered or when newly developed assessments are available, whichever is
80 later.

81 The Board shall also provide the option of industry certification and state licensure examinations as a
82 student-selected verified credit.

83 The Board of Education shall make publicly available such assessments in a timely manner and as
84 soon as practicable following the administration of such tests, so long as the release of such assessments
85 does not compromise test security or deplete the bank of assessment questions necessary to construct
86 subsequent tests, or limit the ability to test students on demand and provide immediate results in the
87 web-based assessment system.

88 The Board shall include in the student outcome measures that are required by the Standards for
89 Accreditation end-of-course or end-of-grade assessments for various grade levels and classes, including
90 the completion of the alternative assessments implemented by each local school board, in accordance
91 with the Standards of Learning. These assessments shall include end-of-course or end-of-grade tests for
92 English, mathematics, science, and history and social science and may be integrated to include multiple
93 subject areas.

94 The Standards of Learning assessments administered to students in grades three through eight shall
95 not exceed (a) reading and mathematics in grades three and four; (b) reading, mathematics, and science
96 in grade five; (c) reading and mathematics in grades six and seven; (d) reading, writing, and
97 mathematics in grade eight; (e) science after the student receives instruction in the grade six science, life
98 science, and physical science Standards of Learning and before the student completes grade eight; and
99 (f) Virginia Studies and Civics and Economics once each at the grade levels deemed appropriate by each
100 local school board.

101 Each school board shall annually certify that it has provided instruction and administered an
102 alternative assessment, consistent with Board guidelines, to students in grades three through eight in
103 each Standards of Learning subject area in which a Standards of Learning assessment was not
104 administered during the school year. Such guidelines shall (1) incorporate options for age-appropriate,
105 authentic performance assessments and portfolios with rubrics and other methodologies designed to
106 ensure that students are making adequate academic progress in the subject area and that the Standards of
107 Learning content is being taught; (2) permit and encourage integrated assessments that include multiple
108 subject areas; and (3) emphasize collaboration between teachers to administer and substantiate the
109 assessments and the professional development of teachers to enable them to make the best use of
110 alternative assessments.

111 Local school divisions shall provide targeted mathematics remediation and intervention to students in
112 grades six through eight who show computational deficiencies as demonstrated by their individual
113 performance on any diagnostic test or grade-level Standards of Learning mathematics test that measures
114 non-calculator computational skills.

115 In addition, to assess the educational progress of students, the Board of Education shall (A) develop
116 appropriate assessments, which may include criterion-referenced tests and other assessment instruments
117 that may be used by classroom teachers; (B) select appropriate industry certification and state licensure
118 examinations; and (C) prescribe and provide measures, which may include nationally normed tests to be
119 used to identify students who score in the bottom quartile at selected grade levels; and (D) authorize the
120 use of an English language proficiency assessment such as the WIDA ACCESS for ELLs assessment as

an alternative to the eleventh grade Standards of Learning end-of-course English reading assessment for students with limited English proficiency. An annual justification that includes evidence that the student meets the participation criteria defined by the Virginia Department of Education shall be provided for each student considered for the Virginia Grade Level Alternative. Each Individual Education Program team shall review such justification and make the final determination as to whether or not the Virginia Grade Level Alternative is appropriate for the student. The superintendent and the school board chairman shall certify to the Board of Education, as a part of certifying compliance with the Standards of Quality, that there is a justification in the Individual Education Program for every student who takes the Virginia Grade Level Alternative. Compliance with this requirement shall be monitored as a part of the special education monitoring process conducted by the Department of Education. The Board shall report to the Governor and General Assembly in its annual reports pursuant to § 22.1-18 any school division that is not in compliance with this requirement.

The Standards of Learning requirements, including all related assessments, shall be waived for any student awarded a scholarship under the Brown v. Board of Education Scholarship Program, pursuant to § 30-231.2, who is enrolled in a preparation program for a high school equivalency examination approved by the Board of Education or in an adult basic education program or an adult secondary education program to obtain the high school diploma or a high school equivalency certificate.

The Department of Education shall develop processes for informing school divisions of changes in the Standards of Learning.

The Board of Education may adopt special provisions related to the administration and use of any Standards of Learning test or tests in a content area as applied to accreditation ratings for any period during which the Standards of Learning content or assessments in that area are being revised and phased in. Prior to statewide administration of such tests, the Board of Education shall provide notice to local school boards regarding such special provisions.

D. The Board of Education may pursue all available civil remedies pursuant to § 22.1-19.1 or administrative action pursuant to § 22.1-292.1 for breaches in test security and unauthorized alteration of test materials or test results.

The Board may initiate or cause to be initiated a review or investigation of any alleged breach in security, unauthorized alteration, or improper administration of tests, including the exclusion of students from testing who are required to be assessed, by local school board employees responsible for the distribution or administration of the tests.

Records and other information furnished to or prepared by the Board during the conduct of a review or investigation may be withheld pursuant to subdivision 11 of § 2.2-3705.3. However, this section shall not prohibit the disclosure of records to (i) a local school board or division superintendent for the purpose of permitting such board or superintendent to consider or to take personnel action with regard to an employee or (ii) any requester, after the conclusion of a review or investigation, in a form that (a) does not reveal the identity of any person making a complaint or supplying information to the Board on a confidential basis and (b) does not compromise the security of any test mandated by the Board. Any local school board or division superintendent receiving such records or other information shall, upon taking personnel action against a relevant employee, place copies of such records or information relating to the specific employee in such person's personnel file.

Notwithstanding any other provision of state law, no test or examination authorized by this section, including the Standards of Learning assessments, shall be released or required to be released as minimum competency tests, if, in the judgment of the Board, such release would breach the security of such test or examination or deplete the bank of questions necessary to construct future secure tests.

E. With such funds as may be appropriated, the Board of Education may provide, through an agreement with vendors having the technical capacity and expertise to provide computerized tests and assessments, and test construction, analysis, and security, for (i) web-based computerized tests and assessments, including computer-adaptive Standards of Learning assessments, for the evaluation of student progress during and after remediation and (ii) the development of a remediation item bank directly related to the Standards of Learning.

F. To assess the educational progress of students as individuals and as groups, each local school board shall require the use of Standards of Learning assessments, alternative assessments, and other relevant data, such as industry certification and state licensure examinations, to evaluate student progress and to determine educational performance. Each local school shall require the administration of appropriate assessments to students, which may include criterion-referenced tests and teacher-made tests and shall include the Standards of Learning assessments, the local school board's alternative assessments, and the National Assessment of Educational Progress state-by-state assessment. Each school board shall analyze and report annually, in compliance with any criteria that may be established by the Board of Education, the results from the Stanford Achievement Test Series, Ninth Edition (Stanford Nine) assessment, if administered, industry certification examinations, and the Standards of Learning

182 Assessments to the public.

183 The Board of Education shall not require administration of the Stanford Achievement Test Series,
184 Ninth Edition (Stanford Nine) assessment, except as may be selected to facilitate compliance with the
185 requirements for home instruction pursuant to § 22.1-254.1.

186 The Board shall include requirements for the reporting of the Standards of Learning assessment
187 scores and averages for each year, regardless of accreditation frequency, as part of the Board's
188 requirements relating to the School Performance Report Card. Such scores shall be disaggregated for
189 each school by student subgroups on the Virginia assessment program as appropriate and shall be
190 reported to the public within three months of their receipt. These reports (i) shall be posted on the
191 portion of the Department of Education's website relating to the School Performance Report Card, in a
192 format and in a manner that allows year-to-year comparisons, and (ii) may include the National
193 Assessment of Educational Progress state-by-state assessment.

194 G. Each local school division superintendent shall regularly review the division's submission of data
195 and reports required by state and federal law and regulations to ensure that all information is accurate
196 and submitted in a timely fashion. The Superintendent of Public Instruction shall provide a list of the
197 required reports and data to division superintendents annually. The status of compliance with this
198 requirement shall be included in the Board of Education's annual report to the Governor and the General
199 Assembly as required by § 22.1-18.

200 H. Any school board may request the Board of Education for release from state regulations or, on
201 behalf of one or more of its schools, for approval of an Individual School Accreditation Plan for the
202 evaluation of the performance of one or more of its schools as authorized for certain other schools by
203 the Standards of Accreditation pursuant to 8 VAC 20-131-280 C of the Virginia Administrative Code.
204 Waivers of regulatory requirements may be granted by the Board of Education based on submission of a
205 request from the division superintendent and chairman of the local school board. The Board of
206 Education may grant, for a period up to five years, a waiver of regulatory requirements that are not (i)
207 mandated by state or federal law or (ii) designed to promote health or safety. The school board shall
208 provide in its waiver request a description of how the releases from state regulations are designed to
209 increase the quality of instruction and improve the achievement of students in the affected school or
210 schools. The Department of Education shall provide (a) guidance to any local school division that
211 requests releases from state regulations and (b) information about opportunities to form partnerships with
212 other agencies or entities to any local school division in which the school or schools granted releases
213 from state regulations have demonstrated improvement in the quality of instruction and the achievement
214 of students.

215 The Board of Education may also grant local school boards waivers of specific requirements in
216 § 22.1-253.13:2, based on submission of a request from the division superintendent and chairman of the
217 local school board, permitting the local school board to assign instructional personnel to the schools with
218 the greatest needs, so long as the school division employs a sufficient number of personnel divisionwide
219 to meet the total number required by § 22.1-253.13:2 and all pupil/teacher ratios and class size
220 maximums set forth in subsection C of § 22.1-253.13:2 are met. The school board shall provide in its
221 request a description of how the waivers from specific Standards of Quality staffing standards are
222 designed to increase the quality of instruction and improve the achievement of students in the affected
223 school or schools. The waivers may be renewed in up to five-year increments, or revoked, based on
224 student achievement results in the affected school or schools.