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HOUSE BILL NO. 2387

Offered January 9, 2019

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A *BILL to amend and reenact §§ 22.1-253.13:2, 22.1-276.2, 22.1-277, 22.1-277.04, and 22.1-277.05 of the Code of Virginia, relating to student discipline; alternative education programs.*

Patrons—Bulova, McQuinn and Murphy; Senator: McClellan

Referred to Committee on Education

Be it enacted by the General Assembly of Virginia:

1. That §§ 22.1-253.13:2, 22.1-276.2, 22.1-277, 22.1-277.04, and 22.1-277.05 of the Code of Virginia are amended and reenacted as follows:

§ 22.1-253.13:2. Standard 2. Instructional, administrative, and support personnel.

A. The Board shall establish requirements for the licensing of teachers, principals, superintendents, and other professional personnel.

B. School boards shall employ licensed instructional personnel qualified in the relevant subject areas.

C. Each school board shall assign licensed instructional personnel in a manner that produces divisionwide ratios of students in average daily membership to full-time equivalent teaching positions, excluding special education teachers, principals, assistant principals, counselors, and librarians, that are not greater than the following ratios: (i) 24 to one in kindergarten with no class being larger than 29 students; if the average daily membership in any kindergarten class exceeds 24 pupils, a full-time teacher's aide shall be assigned to the class; (ii) 24 to one in grades one, two, and three with no class being larger than 30 students; (iii) 25 to one in grades four through six with no class being larger than 35 students; and (iv) 24 to one in English classes in grades six through 12; and (v) 10 to one in *alternative education programs provided pursuant to subsection E of § 22.1-277*. After September 30 of any school year, anytime the number of students in a class exceeds the class size limit established by this subsection, the local school division shall notify the parent of each student in such class of such fact no later than 10 days after the date on which the class exceeded the class size limit. Such notification shall state the reason that the class size exceeds the class size limit and describe the measures that the local school division will take to reduce the class size to comply with this subsection.

Within its regulations governing special education programs, the Board shall seek to set pupil/teacher ratios for pupils with intellectual disability that do not exceed the pupil/teacher ratios for self-contained classes for pupils with specific learning disabilities.

Further, school boards shall assign instructional personnel in a manner that produces schoolwide ratios of students in average daily memberships to full-time equivalent teaching positions of 21 to one in middle schools and high schools. School divisions shall provide all middle and high school teachers with one planning period per day or the equivalent, unencumbered of any teaching or supervisory duties.

D. Each local school board shall employ with state and local basic, special education, gifted, and career and technical education funds a minimum number of licensed, full-time equivalent instructional personnel for each 1,000 students in average daily membership (ADM) as set forth in the appropriation act. Calculations of kindergarten positions shall be based on full-day kindergarten programs. Beginning with the March 31 report of average daily membership, those school divisions offering half-day kindergarten with pupil/teacher ratios that exceed 30 to one shall adjust their average daily membership for kindergarten to reflect 85 percent of the total kindergarten average daily memberships, as provided in the appropriation act.

E. In addition to the positions supported by basic aid and in support of regular school year programs of prevention, intervention, and remediation, state funding, pursuant to the appropriation act, shall be provided to fund certain full-time equivalent instructional positions for each 1,000 students in grades K through 12 who are identified as needing prevention, intervention, and remediation services. State funding for prevention, intervention, and remediation programs provided pursuant to this subsection and the appropriation act may be used to support programs for educationally at-risk students as identified by the local school boards.

To provide algebra readiness intervention services required by § 22.1-253.13:1, school divisions may employ mathematics teacher specialists to provide the required algebra readiness intervention services. School divisions using the Standards of Learning Algebra Readiness Initiative funding in this manner shall only employ instructional personnel licensed by the Board of Education.

F. In addition to the positions supported by basic aid and those in support of regular school year programs of prevention, intervention, and remediation, state funding, pursuant to the appropriation act,

59 shall be provided to support 17 full-time equivalent instructional positions for each 1,000 students
 60 identified as having limited English proficiency, which positions may include dual language teachers
 61 who provide instruction in English and in a second language.

62 To provide flexibility in the instruction of English language learners who have limited English
 63 proficiency and who are at risk of not meeting state accountability standards, school divisions may use
 64 state and local funds from the Standards of Quality Prevention, Intervention, and Remediation account to
 65 employ additional English language learner teachers or dual language teachers to provide instruction to
 66 identified limited English proficiency students. Using these funds in this manner is intended to
 67 supplement the instructional services provided in this section. School divisions using the SOQ
 68 Prevention, Intervention, and Remediation funds in this manner shall employ only instructional personnel
 69 licensed by the Board of Education.

70 G. In addition to the full-time equivalent positions required elsewhere in this section, each local
 71 school board shall employ the following reading specialists in elementary schools, one full-time in each
 72 elementary school at the discretion of the local school board. One reading specialist employed by each
 73 local school board that employs a reading specialist shall have training in the identification of and the
 74 appropriate interventions, accommodations, and teaching techniques for students with dyslexia or a
 75 related disorder and shall serve as an advisor on dyslexia and related disorders. Such reading specialist
 76 shall have an understanding of the definition of dyslexia and a working knowledge of (i) techniques to
 77 help a student on the continuum of skills with dyslexia; (ii) dyslexia characteristics that may manifest at
 78 different ages and grade levels; (iii) the basic foundation of the keys to reading, including multisensory,
 79 explicit, systemic, and structured reading instruction; and (iv) appropriate interventions, accommodations,
 80 and assistive technology supports for students with dyslexia.

81 To provide reading intervention services required by § 22.1-253.13:1, school divisions may employ
 82 reading specialists to provide the required reading intervention services. School divisions using the Early
 83 Reading Intervention Initiative funds in this manner shall employ only instructional personnel licensed
 84 by the Board of Education.

85 H. Each local school board shall employ, at a minimum, the following full-time equivalent positions
 86 for any school that reports fall membership, according to the type of school and student enrollment:

87 1. Principals in elementary schools, one half-time to 299 students, one full-time at 300 students;
 88 principals in middle schools, one full-time, to be employed on a 12-month basis; principals in high
 89 schools, one full-time, to be employed on a 12-month basis;

90 2. Assistant principals in elementary schools, one half-time at 600 students, one full-time at 900
 91 students; assistant principals in middle schools, one full-time for each 600 students; assistant principals
 92 in high schools, one full-time for each 600 students; and school divisions that employ a sufficient
 93 number of assistant principals to meet this staffing requirement may assign assistant principals to schools
 94 within the division according to the area of greatest need, regardless of whether such schools are
 95 elementary, middle, or secondary;

96 3. Librarians in elementary schools, one part-time to 299 students, one full-time at 300 students;
 97 librarians in middle schools, one-half time to 299 students, one full-time at 300 students, two full-time
 98 at 1,000 students; librarians in high schools, one half-time to 299 students, one full-time at 300 students,
 99 two full-time at 1,000 students. Local school divisions that employ a sufficient number of librarians to
 100 meet this staffing requirement may assign librarians to schools within the division according to the area
 101 of greatest need, regardless of whether such schools are elementary, middle, or secondary; and

102 4. Guidance counselors in elementary schools, one hour per day per 100 students, one full-time at
 103 500 students, one hour per day additional time per 100 students or major fraction thereof; guidance
 104 counselors in middle schools, one period per 80 students, one full-time at 400 students, one additional
 105 period per 80 students or major fraction thereof; guidance counselors in high schools, one period per 70
 106 students, one full-time at 350 students, one additional period per 70 students or major fraction thereof.
 107 Local school divisions that employ a sufficient number of guidance counselors to meet this staffing
 108 requirement may assign guidance counselors to schools within the division according to the area of
 109 greatest need, regardless of whether such schools are elementary, middle, or secondary.

110 I. Local school boards shall employ five full-time equivalent positions per 1,000 students in grades
 111 kindergarten through five to serve as elementary resource teachers in art, music, and physical education.

112 J. Local school boards shall employ two full-time equivalent positions per 1,000 students in grades
 113 kindergarten through 12, one to provide technology support and one to serve as an instructional
 114 technology resource teacher.

115 To provide flexibility, school divisions may use the state and local funds for instructional technology
 116 resource teachers to employ a data coordinator position, an instructional technology resource teacher
 117 position, or a data coordinator/instructional resource teacher blended position. The data coordinator
 118 position is intended to serve as a resource to principals and classroom teachers in the area of data
 119 analysis and interpretation for instructional and school improvement purposes, as well as for overall data
 120 management and administration of state assessments. School divisions using these funds in this manner

121 shall employ only instructional personnel licensed by the Board of Education.
 122 K. Local school boards may employ additional positions that exceed these minimal staffing
 123 requirements. These additional positions may include, but are not limited to, those funded through the
 124 state's incentive and categorical programs as set forth in the appropriation act.

125 L. A combined school, such as kindergarten through 12, shall meet at all grade levels the staffing
 126 requirements for the highest grade level in that school; this requirement shall apply to all staff, except
 127 for guidance counselors, and shall be based on the school's total enrollment; guidance counselor staff
 128 requirements shall, however, be based on the enrollment at the various school organization levels, i.e.,
 129 elementary, middle, or high school. The Board of Education may grant waivers from these staffing
 130 levels upon request from local school boards seeking to implement experimental or innovative programs
 131 that are not consistent with these staffing levels.

132 M. School boards shall, however, annually, on or before December 31, report to the public (i) the
 133 actual pupil/teacher ratios in elementary school classrooms in the local school division by school for the
 134 current school year; and (ii) the actual pupil/teacher ratios in middle school and high school in the local
 135 school division by school for the current school year. Actual pupil/teacher ratios shall include only the
 136 teachers who teach the grade and class on a full-time basis and shall exclude resource personnel. School
 137 boards shall report pupil/teacher ratios that include resource teachers in the same annual report. Any
 138 classes funded through the voluntary kindergarten through third grade class size reduction program shall
 139 be identified as such classes. Any classes having waivers to exceed the requirements of this subsection
 140 shall also be identified. Schools shall be identified; however, the data shall be compiled in a manner to
 141 ensure the confidentiality of all teacher and pupil identities.

142 N. Students enrolled in a public school on a less than full-time basis shall be counted in ADM in the
 143 relevant school division. Students who are either (i) enrolled in a nonpublic school or (ii) receiving
 144 home instruction pursuant to § 22.1-254.1, and who are enrolled in public school on a less than full-time
 145 basis in any mathematics, science, English, history, social science, career and technical education, fine
 146 arts, foreign language, or health education or physical education course shall be counted in the ADM in
 147 the relevant school division on a pro rata basis as provided in the appropriation act. Each such course
 148 enrollment by such students shall be counted as 0.25 in the ADM; however, no such nonpublic or home
 149 school student shall be counted as more than one-half a student for purposes of such pro rata
 150 calculation. Such calculation shall not include enrollments of such students in any other public school
 151 courses.

152 O. Each local school board shall provide those support services that are necessary for the efficient
 153 and cost-effective operation and maintenance of its public schools.

154 For the purposes of this title, unless the context otherwise requires, "support services positions" shall
 155 include the following:

156 1. Executive policy and leadership positions, including school board members, superintendents and
 157 assistant superintendents;

158 2. Fiscal and human resources positions, including fiscal and audit operations;

159 3. Student support positions, including (i) social workers and social work administrative positions; (ii)
 160 guidance administrative positions not included in subdivision H 4; (iii) homebound administrative
 161 positions supporting instruction; (iv) attendance support positions related to truancy and dropout
 162 prevention; and (v) health and behavioral positions, including school nurses and school psychologists;

163 4. Instructional personnel support, including professional development positions and library and
 164 media positions not included in subdivision H 3;

165 5. Technology professional positions not included in subsection J;

166 6. Operation and maintenance positions, including facilities; pupil transportation positions; operation
 167 and maintenance professional and service positions; and security service, trade, and laborer positions;

168 7. Technical and clerical positions for fiscal and human resources, student support, instructional
 169 personnel support, operation and maintenance, administration, and technology; and

170 8. School-based clerical personnel in elementary schools; part-time to 299 students, one full-time at
 171 300 students; clerical personnel in middle schools; one full-time and one additional full-time for each
 172 600 students beyond 200 students and one full-time for the library at 750 students; clerical personnel in
 173 high schools; one full-time and one additional full-time for each 600 students beyond 200 students and
 174 one full-time for the library at 750 students. Local school divisions that employ a sufficient number of
 175 school-based clerical personnel to meet this staffing requirement may assign the clerical personnel to
 176 schools within the division according to the area of greatest need, regardless of whether such schools are
 177 elementary, middle, or secondary.

178 Pursuant to the appropriation act, support services shall be funded from basic school aid.

179 School divisions may use the state and local funds for support services to provide additional
 180 instructional services.

181 P. Notwithstanding the provisions of this section, when determining the assignment of instructional

182 and other licensed personnel in subsections C through J, a local school board shall not be required to
183 include full-time students of approved virtual school programs.

184 **§ 22.1-276.2. Removal of students from classes.**

185 A. Teachers shall have the initial authority to remove a student for disruptive behavior from a class.

186 B. Each school board shall establish, within the regulations governing student conduct required by
187 § 22.1-279.6:

188 1. Criteria for teachers to remove disruptive students from their classes;

189 2. Requirements for incident reports of disruptive behavior to school administrators and any other
190 documentation to support such removals from class;

191 3. Procedures for the written notification of a student and his parents of any incident report and its
192 contents and for the opportunity to meet with the teacher and school administrators to discuss the
193 student's behavior and the possible consequences if such behavior does not cease;

194 4. Guidelines for the alternative assignment and instruction of such students and for the duration of
195 such removals; and

196 5. Procedures for the return of students to class, for teacher participation in any decision by the
197 principal to return a student to the class from which he has been removed, and for the resolution of any
198 disagreements between such principal and teacher regarding such return.

199 C. The principal shall, unless a student who has been removed from class is ~~suspended or~~ expelled
200 from school attendance, ensure that such student continues to receive an education.

201 D. Any teacher whose evaluation indicates deficiencies in the management of student conduct may
202 be required by the school board to attend professional development activities designed to improve
203 classroom management and disciplinary skills.

204 E. Application of this section to students with disabilities shall be in accordance with state and
205 federal law and regulations.

206 F. This section shall not be construed to limit or restrict other school board policies and regulations
207 for maintaining order in the classroom.

208 **§ 22.1-277. Suspensions and expulsions of students generally.**

209 A. Students may be suspended or expelled from attendance at school for sufficient cause; however,
210 in no cases may sufficient cause for suspensions include only instances of truancy.

211 B. Except as provided in subsection C or § 22.1-277.07 or 22.1-277.08, no student in preschool
212 through grade three shall be suspended for more than three school days or expelled from attendance at
213 school, unless (i) the offense involves physical harm or credible threat of physical harm to others or (ii)
214 the local school board or the division superintendent or his designee finds that aggravating circumstances
215 exist, as defined by the Department.

216 C. Any student for whom the division superintendent of the school division in which such student is
217 enrolled has received a report pursuant to § 16.1-305.1 of an adjudication of delinquency or a conviction
218 for an offense listed in subsection G of § 16.1-260 may be suspended or expelled from school
219 attendance pursuant to this article.

220 D. The authority provided in § 22.1-276.2 for teachers to remove students from their classes in
221 certain instances of disruptive behavior shall not be interpreted to affect the operation of § 22.1-277.04,
222 22.1-277.05, or 22.1-277.06.

223 E. *The local school board shall provide alternative education programs for any student suspended*
224 *pursuant to § 22.1-277.04 or 22.1-277.05 in accordance with quality standards for such programs*
225 *established by the Board.*

226 **§ 22.1-277.04. Short-term suspension; procedures; readmission.**

227 A pupil may be suspended for not more than ~~ten~~ 10 school days by either the school principal, any
228 assistant principal, or, in their absence, any teacher. The principal, assistant principal, or teacher may
229 suspend the pupil after giving the pupil oral or written notice of the charges against him and, if he
230 denies them, an explanation of the facts as known to school personnel and an opportunity to present his
231 version of what occurred. In the case of any pupil whose presence poses a continuing danger to persons
232 or property, or whose presence is an ongoing threat of disruption, the pupil may be removed from
233 school immediately and the notice, explanation of facts, and opportunity to present his version shall be
234 given as soon as practicable thereafter.

235 Upon suspension of any pupil, the principal, assistant principal, or teacher responsible for such
236 suspension shall report the facts of the case in writing to the division superintendent or his designee and
237 the parent of the pupil suspended. The division superintendent or his designee shall review forthwith the
238 action taken by the principal, assistant principal, or teacher upon a petition for such review by any party
239 in interest and confirm or disapprove such action based on an examination of the record of the pupil's
240 behavior.

241 The decision of the division superintendent or his designee may be appealed to the school board or a
242 committee thereof in accordance with regulations of the school board; however, the decision of the
243 division superintendent or his designee shall be final if so prescribed by school board regulations.

244 The school board shall require that any oral or written notice to the parent of a student who is
 245 suspended from school attendance for not more than ~~ten~~ 10 days include (i) notification of the length of
 246 the suspension, (ii) information regarding the availability of ~~community-based educational programs,~~
 247 alternative education programs ~~or other educational options~~ provided by the local school board, and (iii)
 248 notification of the student's right to return to regular school attendance upon the expiration of the
 249 suspension. The costs of any community-based educational program, or alternative education program or
 250 educational option, which is not a part of the educational program offered by the school division, shall
 251 be borne by the parent of the student.

252 **§ 22.1-277.05. Long-term suspensions; procedures; readmission.**

253 A. A pupil may be suspended from attendance at school for 11 to 45 school days after providing
 254 written notice to the pupil and his parent of the proposed action and the reasons therefor and of the
 255 right to a hearing before the school board, or a committee thereof, or the superintendent or his designee,
 256 in accordance with regulations of the school board. If the regulations provide for a hearing by the
 257 superintendent or his designee, the regulations shall also provide for an appeal of the decision to the full
 258 school board. Such appeal shall be decided by the school board within 30 days.

259 If the regulations provide for a hearing by a committee of the school board, the regulations shall also
 260 provide that such committee may confirm or disapprove the suspension of a student. Any such
 261 committee of the school board shall be composed of at least three members. If the committee's decision
 262 is not unanimous, the pupil or his parent may appeal the committee's decision to the full school board.
 263 Such appeal shall be decided by the school board within 30 days.

264 B. A school board shall include in the written notice of a suspension for 11 to 45 school days
 265 required by this section notification of the length of the suspension. In the case of a suspension for 11
 266 to 45 school days, such written notice shall provide information concerning the availability of
 267 ~~community-based educational,~~ alternative education, ~~or intervention~~ programs provided by the local
 268 school board. Such notice shall also state that the student is eligible to return to regular school
 269 attendance upon the expiration of the suspension or to attend an appropriate alternative education
 270 program approved by the school board during or upon the expiration of the suspension. The costs of any
 271 community-based educational, alternative education, or intervention program that is not a part of the
 272 educational program offered by the school division that the student may attend during his suspension
 273 shall be borne by the parent of the student.

274 ~~Nothing in this section shall be construed to prohibit the school board from permitting or requiring~~
 275 ~~students suspended pursuant to this section to attend an alternative education program provided by the~~
 276 ~~school board for the term of such suspension.~~

277 C. Notwithstanding the provisions of subsections A and B, a long-term suspension may extend
 278 beyond a 45-school-day period but shall not exceed 364 calendar days if (i) the offense is one described
 279 in § 22.1-277.07 or 22.1-277.08 or involves serious bodily injury or (ii) the school board or division
 280 superintendent or his designee finds that aggravating circumstances exist, as defined by the Department.
 281 Such definition shall include a consideration of a student's disciplinary history.

282 **2. That this provisions of this act shall become effective after the rebenchmarking of the direct aid**
 283 **to public education budget for the 2020-2022 biennium.**