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HOUSE BILL NO. 2387

Offered January 9, 2019

Prefiled January 8, 2019

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,

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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

shall employ only instructional personnel licensed by the Board of Education.

K. Local school boards may employ additional positions that exceed these minimal staffing requirements. These additional positions may include, but are not limited to, those funded through the state's incentive and categorical programs as set forth in the appropriation act.

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

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

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

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

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

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

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

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

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

5. Technology professional positions not included in subsection J;

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

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

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

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

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

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

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

§ 22.1-276.2. Removal of students from classes.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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.

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.

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

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

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

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

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

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

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

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

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

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

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

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

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