

VIRGINIA ACTS OF ASSEMBLY -- 1995 SESSION

CHAPTER 724

An Act to amend and reenact §§ 22.1-257, as it is currently effective and as it may become effective, 22.1-277.1 and 22.1-278 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 22.1-277.01, relating to the expulsion of students for certain infractions.

[H 1614]

Approved April 6, 1995

Be it enacted by the General Assembly of Virginia:

1. That §§ 22.1-257, as it is currently effective and as it may become effective, 22.1-277.1 and 22.1-278 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 22.1-277.01 as follows:

§ 22.1-257. Excusing children who cannot benefit from education or whose parents conscientiously object; excusing children for reasons of health or apprehension for personal safety; school board and court authority to order alternatives.

A. A school board:

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

2. Shall excuse from attendance at school any pupil who, together with his parents, by reason of bona fide religious training or belief, is conscientiously opposed to attendance at school;

3. Shall, on the recommendation of the juvenile and domestic relations district court of the county or city in which the pupil resides, excuse from attendance at school 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 to be justified;

4. May, on recommendation of the juvenile and domestic relations district court of the county or city in which the pupil resides, excuse from attendance at school any pupil who, in the judgment of such court, cannot benefit from education at such school;

5. May, *in accordance with the procedures set forth in § 22.1-277 and upon a finding that a school-age child has (i) committed an offense in violation of school board policies, ~~or against whom such charges are pending~~ as (ii) been charged with an offense described in subsection A of ~~§ 22.1-209.1:2 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 (iii) been expelled from school attendance pursuant to § 22.1-277.01,~~* require the child to attend an alternative education program as provided in § 22.1-209.1:2 or § 22.1-277.1.

B. The court in reaching its determination as to whether the concern or apprehension referred to in subdivision A 3 of this section is justified shall take into consideration the recommendation of the principal and division superintendent.

C. The juvenile and domestic relations district court of the county or city in which a pupil resides, or in which charges are pending against a pupil, or any court in which charges are pending against a pupil, may require the pupil who has been charged with (i) a crime which resulted in or could have resulted in injury to others, (ii) a violation of Article 1 (§ 18.2-77 et seq.) of Chapter 5 of Title 18.2, or (iii) any offense related to possession or distribution of any Schedule I, II, or III controlled substances to attend an alternative education program, including, but not limited to, night school, adult education, or any other educational program designed to offer instruction to students for whom the regular program of instruction may be inappropriate. The local school board of the school division in which the pupil resides shall determine the appropriate alternative education placement for such pupil. This subsection shall not be construed to limit the authority of school boards to expel, suspend, or exclude students, as provided in §§ 22.1-277, 22.1-277.01, and 22.1-277.2.

D. As used in subdivision A 2 of this section, the term "bona fide religious training or belief" does not include essentially political, sociological or philosophical views or a merely personal moral code.

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

§ 22.1-257. (Delayed effective date) Excusing children who cannot benefit from education or whose parents conscientiously object; excusing children for reasons of health or apprehension for personal safety; court authority to order alternatives.

A. A school board:

1. May, on recommendation of the principal and the division superintendent, with the written consent

of the parent or guardian, excuse from attendance at school any pupil who the school board determines, in accordance with regulations of the Board of Education, cannot benefit from education at such school;

2. Shall excuse from attendance at school any pupil who, together with his parents, by reason of bona fide religious training or belief, is conscientiously opposed to attendance at school;

3. Shall, on the recommendation of the family court of the county or city in which the pupil resides, excuse from attendance at school 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 to be justified;

4. May, on recommendation of the family court of the county or city in which the pupil resides, excuse from attendance at school any pupil who, in the judgment of such court, cannot benefit from education at such school;

5. May, *in accordance with the procedures set forth in § 22.1-277 and upon a finding that a school-age child has (i) committed an offense in violation of school board policies, or against whom such charges are pending as (ii) been charged with an offense described in subsection A of § 22.1-209.1:2 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 (iii) been expelled from school attendance pursuant to § 22.1-277.01, require the child to attend an alternative education program as provided in § 22.1-209.1:2 or § 22.1-277.1.*

B. The court in reaching its determination as to whether the concern or apprehension referred to in subdivision A 3 of this section is justified shall take into consideration the recommendation of the principal and division superintendent.

C. The family court of the county or city in which a pupil resides, or in which charges are pending against a pupil, or any court in which charges are pending against a pupil, may require the pupil who has been charged with (i) a crime which resulted in or could have resulted in injury to others, (ii) a violation of Article 1 (§ 18.2-77 et seq.) of Chapter 5 of Title 18.2, or (iii) any offense related to possession or distribution of any Schedule I, II, or III controlled substances to attend an alternative education program, including, but not limited to, night school, adult education, or any other educational program designed to offer instruction to students for whom the regular program of instruction may be inappropriate. The local school board of the school division in which the pupil resides shall determine the appropriate alternative education placement for such pupil. This subsection shall not be construed to limit the authority of school boards to expel, suspend, or exclude students, as provided in §§ 22.1-277, 22.1-277.01, and 22.1-277.2.

D. As used in subdivision A 2 of this section, the term "bona fide religious training or belief" does not include essentially political, sociological or philosophical views or a merely personal moral code.

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

§ 22.1-277.01. Expulsion of students under certain circumstances; Board of Education designated agency; local school board application for assistance; reporting; exceptions.

A. *In compliance with the federal Improving America's Schools Act of 1994 (Part F—"Gun-Free Schools Act of 1994"), a school board shall expel from school attendance for a period of not less than one year any student whom such school board has determined, in accordance with the procedures set forth in § 22.1-277, to have brought a firearm onto school property or to a school-sponsored activity as prohibited by § 18.2-308.1, or to have brought a firearm as defined in subsection D of this section on school property or to a school-sponsored activity. A school board may, however, determine, based on the facts of the particular case, that special circumstances exist and another disciplinary action or term of expulsion is appropriate.*

B. *The Board of Education is designated as the state education agency to carry out the provisions of the federal Improving America's Schools Act of 1994, and shall administer the funds to be appropriated to the Commonwealth under this act.*

C. *Each school board shall revise its standards of student conduct no later than three months after the date on which this act becomes effective. Local school boards requesting moneys apportioned to the Commonwealth through the federal Improving America's Schools Act of 1994 shall submit to the Department of Education an application requesting such assistance. Applications for assistance shall include:*

1. Documentation that the local school board has adopted and implemented student conduct policies in compliance with this section;

2. A description of the circumstances pertaining to expulsions imposed under this section, including (i) the schools from which students were expelled under this section, (ii) the number of students expelled from each such school in the school division during the school year, and (iii) the types of firearms involved in the expulsions.

D. As used in this section:

"Destructive device" means (i) any explosive, incendiary, or poison gas, bomb, grenade, rocket

having a propellant charge of more than four ounces, missile having an explosive or incendiary charge of more than one-quarter ounce, mine, or other similar device; (ii) any weapon, except a shotgun or a shotgun shell generally recognized as particularly suitable for sporting purposes, by whatever name known which will, or may readily be converted to, expel a projectile by the action of an explosive or other propellant, and which has any barrel with a bore of more than one-half inch in diameter; and (iii) any combination of parts either designed or intended for use in converting any device into any destructive device described in this subsection and from which a destructive device may be readily assembled. "Destructive device" shall not include any device which is not designed or redesigned for use as a weapon, or any device originally designed for use as a weapon and which is redesigned for use as a signaling, pyrotechnic, line-throwing, safety, or similar device.

"Firearm" means any weapon prohibited on school property or at a school-sponsored activity pursuant to § 18.2-308.1, or (i) any weapon, including a starter gun, which will, or is designed or may readily be converted to, expel a projectile by the action of an explosive; (ii) the frame or receiver of any such weapon; (iii) any firearm muffler or firearm silencer; or (iv) any destructive device.

"One year" means 365 calendar days as required in federal regulations.

E. The exemptions set out in § 18.2-308 shall apply, *mutatis mutandis*, to the provisions of this section. The provisions of this section shall not apply to persons who possess such firearm or firearms as a part of the curriculum or other programs sponsored by the schools in the school division or any organization permitted by the school to use its premises or to any law-enforcement officer while engaged in his duties as such. In addition, this section shall not apply to possession of an unloaded firearm which is in a closed container in or upon a motor vehicle or an unloaded shotgun or rifle in a firearms rack in or upon a motor vehicle.

F. This section shall not be construed to diminish the authority of the Board of Education or the Governor concerning decisions on whether, or the extent to which, Virginia shall participate in the federal Improving America's Schools Act of 1994, or to diminish the Governor's authority to coordinate and provide policy direction on official communications between the Commonwealth and the United States government.

§ 22.1-277.1. Disciplinary authority of school boards under certain circumstances.

A school board may, in accordance with the procedures set forth in § 22.1-277, 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; (ii) found guilty or not innocent of a crime which resulted in or could have resulted in injury to others, or of a crime for which the disposition ordered by a court is required to be disclosed to the superintendent of the school division pursuant to § 16.1-305.1; or (iii) expelled pursuant to § 22.1-277.01, to attend an alternative education program, including, but not limited to, night school, adult education, or any other educational program designed to offer instruction to students for whom the regular program of instruction may be inappropriate. A school board may require such student to attend such programs regardless of where the crime occurred.

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

§ 22.1-278. Guidelines for school board policies; school board regulations governing student conduct; Board standards for compliance with federal law requiring expulsion under certain circumstances by school board.

A. By July 1, ~~1994~~ 1995, the Board of Education shall establish guidelines and develop model student conduct policies to aid local school boards in the implementation of such policies. The guidelines shall include, but not be limited to, (i) criteria for the use of suspension and expulsion as disciplinary measures, the grounds for suspension and expulsion, and the procedure to be followed in such cases; (ii) standards, consistent with state, federal and case laws, for school board policies on alcohol and drugs, vandalism, trespassing, threats, search and seizure, disciplining of students with disabilities, intentional injury of others and dissemination of such policies to students, their parents, and school personnel; and (iii) standards for in-service training of school personnel in and examples of the appropriate management of student conduct and student offenses in violation of school board policies. In the case of suspension and expulsion, the procedures set forth in § 22.1-277 shall be the minimum procedures that the school board may prescribe. By October 31, ~~1994~~ 1995, school boards shall adopt regulations governing student conduct which are consistent with, but may be more stringent than, the guidelines of the Board.

B. The Board of Education shall establish standards to ensure compliance with the federal Improving America's Schools Act of 1994 (Part F—"Gun-Free Schools Act of 1994"), in accordance with § 22.1-277.01, to be effective on July 1, 1995.

This subsection shall not be construed to diminish the authority of the Board of Education or the Governor concerning decisions on whether, or the extent to which, Virginia shall participate in the federal Improving America's Schools Act of 1994, or to diminish the Governor's authority to coordinate and provide policy direction on official communications between the Commonwealth and the United States government.