

LD4813160

HOUSE BILL NO. 1614

Offered January 12, 1995

A BILL 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 gun-free schools and the expulsion of students for certain infractions.

Patrons—Cooper, Almand, Barlow, Behm, Bennett, Brickley, Christian, Clement, Connally, Copeland, Cranwell, Crittenden, Croshaw, Cunningham, Darner, Davies, Deeds, Diamonstein, Dillard, Hall, Hamilton, Jones, D.C., Mayer, Moore, Orrock, Phillips, Plum, Puller, Reynolds, Robinson, Scott, Shuler, Spruill, Stump, Tata, Van Landingham and Van Yahres

Referred to Committee on Education

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, 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, ~~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.

§ 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

INTRODUCED

HB1614

60 safety; court authority to order alternatives.

61 A. A school board:

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

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

67 3. Shall, on the recommendation of the family court of the county or city in which the pupil resides,
68 excuse from attendance at school for such period of time as the court deems appropriate any pupil who,
69 together with his parents, is opposed to attendance at a school by reason of concern for such pupil's
70 health, as verified by competent medical evidence, or by reason of such pupil's reasonable apprehension
71 for personal safety when such concern or apprehension in that pupil's specific case is determined by the
72 court to be justified;

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

76 5. May, upon a finding that a school-age child has (i) committed an offense in violation of school
77 board policies, ~~or against whom such charges are pending as~~ (ii) *been charged with an offense* described
78 in subsection A of § 22.1-209.1:2, ~~or~~ (iii) *been expelled from school attendance pursuant to*
79 *§ 22.1-277.01*, require the child to attend an alternative education program as provided in § 22.1-209.1:2
80 or § 22.1-277.1.

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

84 C. The family court of the county or city, in which a pupil resides, or in which charges are pending
85 against a pupil, or any court in which charges are pending against a pupil, may require the pupil who
86 has been charged with (i) a crime which resulted in or could have resulted in injury to others, (ii) a
87 violation of Article 1 (§ 18.2-77 et seq.) of Chapter 5 of Title 18.2, or (iii) any offense related to
88 possession or distribution of any Schedule I, II, or III controlled substances to attend an alternative
89 education program, including, but not limited to, night school, adult education, or any other educational
90 program designed to offer instruction to students for whom the regular program of instruction may be
91 inappropriate. The local school board of the school division in which the pupil resides shall determine
92 the appropriate alternative education placement for such pupil. This subsection shall not be construed to
93 limit the authority of school boards to expel, suspend, or exclude students, as provided in §§ 22.1-277,
94 22.1-277.01, and 22.1-277.2.

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

97 § 22.1-277.01. *Expulsion of students under certain circumstances; Board of Education designated*
98 *agency; local school board application for assistance; reporting; exceptions.*

99 A. *In compliance with the federal Improving America's School Act of 1994, (Part F—"Gun-Free*
100 *Schools Act of 1994"), a school board shall expel from school attendance for one school year, any*
101 *student who is determined, in accordance with the procedures set forth in § 22.1-277, to have brought a*
102 *firearm, as defined in subsection E of this section consistent with 18 U.S.C. § 921, on school property*
103 *or to a school-sponsored activity. A school board may, however, determine, based on the facts of the*
104 *particular case, that special circumstances exist and another disciplinary action or term of expulsion is*
105 *appropriate.*

106 B. *In the case of a student who has been identified pursuant to the Individuals with Disabilities Act*
107 *of 1991 and who has been expelled from school attendance pursuant to subsection A of this section, the*
108 *school board shall comply with the standards and requirements of the Individuals with Disabilities*
109 *Education Act of 1991, 20 U.S.C. § 1400 et seq., its implementing federal and state regulations, and*
110 *other relevant federal and state laws and regulations. The Board of Education shall report annually to*
111 *the United States Secretary of Education information pertaining to the expulsion of students with*
112 *disabilities, as provided in this subsection.*

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

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

121 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.

E. As used in this section:

"Destructive device" means 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. "Destructive device" shall not include any device which is not designed or rebuilt for use as a weapon or any device which has been redesigned for use as a signaling, pyrotechnic, line-throwing, safety, or other similar device.

"Firearm" means any weapon having any barrel with a bore of more than one-half inch in diameter, including a starter gun, which is amenable to conversion to expelling a projectile by the action of an explosive or other propellant, the frame or receiver of such weapon, any firearm muffler or firearm silencer, or any destructive device.

"One school year" means no more than 180 teaching days.

F. 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.

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

A school board may require any student who has been found guilty or not innocent of a crime which resulted in or could have resulted in injury to others, or any student who has been 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.

§ 22.1-278. Guidelines for school board policies; school board regulations.

By July 1, 1994, 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 to ensure compliance with the federal Improving America's Schools Act of 1994 (Part F—"Gun-Free Schools Act of 1994"); (iii) 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)~~ (iv) 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, school boards shall adopt regulations governing student conduct which are consistent with, but may be more stringent than, the guidelines of the Board.