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**HOUSE BILL NO. 284****AMENDMENT IN THE NATURE OF A SUBSTITUTE**

(Proposed by the House Committee on Education  
on November 24, 1998)

(Patron Prior to Substitute—Delegate Van Yahres)

*A BILL to amend and reenact § 22.1-253.13:1 of the Code of Virginia, as currently effective and as will become effective, relating to inclusion of certain students in average daily membership.*

**Be it enacted by the General Assembly of Virginia:**

**1. That § 22.1-253.13:1 of the Code of Virginia, as currently effective and as will become effective, is amended and reenacted as follows:**

§ 22.1-253.13:1. Standard 1. Basic skills, selected programs, and instructional personnel.

A. The General Assembly and the Board of Education believe that the fundamental goal of the public schools of this Commonwealth must be to enable each student to develop the skills that are necessary for success in school and preparation for life, and find that the quality of education is dependent upon the provision of the appropriate working environment, benefits, and salaries necessary to ensure the availability of high quality instructional personnel and adequate commitment of other resources.

B. The Board of Education shall establish educational objectives to implement the development of the skills that are necessary for success in school and for preparation for life in the years beyond. The current educational objectives, known as the Standards of Learning, shall not be construed to be regulations as defined in § 9-6.14:4; however, the Board of Education may, from time to time, revise these educational objectives to maintain academic rigor. In order to provide appropriate opportunity for input from the general public, teachers, and local school boards, the Board of Education shall conduct public hearings prior to establishing new educational objectives. Thirty days prior to conducting such hearings, the Board shall give written notice by mail of the date, time, and place of the hearings to all local school boards and any other persons requesting to be notified of the hearings and publish notice of its intention to revise these educational objectives in the Virginia Register of Regulations. Interested parties shall be given reasonable opportunity to be heard and present information prior to final adoption of any revisions of these educational objectives.

The Board shall seek to ensure that any revised educational objectives are consistent with the world's highest educational standards. These objectives shall include, but not be limited to, basic skills of communication, computation and critical reasoning including problem solving and decision making and the skills to manage personal finances and to make sound financial decisions, and the development of personal qualities such as self-esteem, sociability, self-management, integrity, and honesty.

With such funds as are made available for this purpose, the Board shall regularly review and revise the competencies for vocational education programs to require the full integration of English, mathematics, science and social studies Standards of Learning. Occupational vocational programs shall be aligned with industry and professional standard certifications, where they exist.

The Standards of Learning in all subject areas shall be subject to regular review and revision to maintain rigor and to reflect a balance between content knowledge and the application of knowledge in preparation for eventual employment and lifelong learning.

School boards shall implement these objectives or objectives specifically designed for their school divisions that are equivalent to or exceed the Board's requirements. Students shall be expected to achieve the educational objectives utilized by the school division at appropriate age or grade levels.

With such funds as are available for this purpose, the Board of Education may prescribe assessment methods to determine the level of achievement of these objectives by all students. Such assessments shall evaluate knowledge, application of knowledge, critical thinking, and skills related to the Standards of Learning being assessed. The Board, with the assistance of independent testing experts, shall conduct a regular analysis and validation process for these assessments.

By July 1, 1999, the Board shall develop and approve objectives for mathematics, at the middle and high school levels, for personal living and finances, which shall focus on money management skills for individuals and families. The personal living and finances objectives shall require instruction in those skills necessary to handle personal business and finances and shall include, but need not be limited to, the following: opening a bank account and how to judge the quality of a bank's services; balancing a check book; completing a loan application; the implications of an inheritance; the basics of personal insurance policies; consumer rights and responsibilities; dealing with salesmen and merchants; debt management, including retail and credit card debt; state and federal tax computation; local tax assessments; computation of interest rates by various mechanisms; understanding simple contracts; and how to contest an incorrect bill. These personal living and finances objectives shall not be required to be

60 included in the Board's Standards of Learning, and shall be developed in a manner to ensure that  
61 instruction in the Standards of Learning shall not be de-emphasized. The Board shall not be required to  
62 evaluate student achievement concerning such objectives in the Standards of Learning Assessment Tests  
63 required by § 22.1-253.13:3.

64 C. Local school boards shall develop and implement a program of instruction for grades K through  
65 12 which emphasizes reading, writing, speaking, mathematical concepts and computations, technological  
66 proficiency, and scientific concepts and processes; essential skills and concepts of citizenship, including  
67 knowledge of history, economics, government, foreign languages, international cultures, health,  
68 environmental issues and geography necessary for responsible participation in American society and in  
69 the international community; fine arts and practical arts; knowledge and skills needed to qualify for  
70 further education and employment or, in the case of some handicapped children, to qualify for  
71 appropriate training; and development of the ability to apply such skills and knowledge in preparation  
72 for eventual employment and lifelong learning.

73 Local school boards shall also develop and implement programs of prevention, intervention, or  
74 remediation for students who are educationally at risk including, but not limited to, those whose scores  
75 are in the bottom national quartile on Virginia State Assessment Program Tests, who do not pass the  
76 literacy tests prescribed by the Board of Education, or who fail to achieve a passing score on any  
77 Standards of Learning assessment in grades three, five, and eight. Such programs may include summer  
78 school for all elementary and middle school grades and for all high school academic courses, as defined  
79 by regulations promulgated by the Board of Education, or other forms of remediation. Division  
80 superintendents shall require such students to take special programs of prevention, intervention, or  
81 remediation which may include attendance in public summer school programs, in accordance with  
82 subsection E of § 22.1-254 and § 22.1-254.01. The requirement for remediation may, however, be  
83 satisfied by the student's attendance in a program of prevention, intervention or remediation which has  
84 been selected by his parent and is either (i) conducted by an accredited private school or (ii) a special  
85 program which has been determined to be comparable to the required public school remediation program  
86 by the division superintendent. The costs of such private school remediation program or other special  
87 remediation program shall be borne by the student's parent. Students required to attend such summer  
88 school programs or to participate in another form of remediation shall not be charged tuition by the  
89 local school division. Based on the number of students attending and the Commonwealth's share of the  
90 per pupil costs, additional state funds shall be provided for summer and other remediation programs as  
91 set forth in the appropriation act.

92 Any student who does not pass the literacy tests or all Standards of Learning assessments in grades  
93 three, five, and eight shall be required to attend a summer school program or participate in another form  
94 of remediation. Such summer school program or other form of remediation shall be chosen by the  
95 school division to be appropriate to the academic needs of the student. State funds shall be provided, as  
96 set forth in the appropriation act, for the attendance in remediation programs conducted by local school  
97 divisions for those students who do not pass the literacy tests beginning with the 1997-1998 fiscal year  
98 and for students who do not pass all Standards of Learning assessments in grades three, five, and eight  
99 beginning with the 1998-99 fiscal year.

100 To ensure consistency in program quality, each school board may establish a remediation program  
101 standards committee which may include, but need not be limited to, the superintendent or his designee,  
102 a teacher, a parent, and one representative of the community at large. The remediation program  
103 standards committee shall recommend the program components for the remediation programs and shall  
104 evaluate the success of the programs. Such program components may include transition mechanisms for  
105 children to ensure the smooth movement between remediation programs and regular programs,  
106 pupil-teacher ratios, objectives, and time, site, and duration of the various programs.

107 Such remediation programs shall include, when applicable, a procedure for early identification of  
108 students who are at-risk of failure of the literacy tests or the Standards of Learning assessments in  
109 grades three, five, and eight. The identified students shall be provided appropriate remediation activities.

110 The Board of Education shall establish standards for full funding of summer remedial programs  
111 which shall include, but not be limited to, the minimum number of instructional hours or the equivalent  
112 thereof required for full funding and an assessment system designed to evaluate program effectiveness.  
113 Based on the number of students attending and the Commonwealth's share of the per pupil instructional  
114 costs, state funds shall be provided for the full cost of summer and other remediation programs as set  
115 forth in the appropriation act, provided such programs comply with such standards as shall be  
116 established by the Board, pursuant to § 22.1-199.2.

117 D. Local school boards shall also implement the following:

118 1. Programs in grades K through 3 which emphasize developmentally appropriate learning to enhance  
119 success.

120 2. Programs based on prevention, intervention, or retrieval designed to increase the number of  
121 students who earn a high school diploma or general education development (GED) certificate. As

provided in the appropriation act, state funding, in addition to basic aid, shall be allocated to support programs grounded in sound educational policy to reduce the number of students who drop out of school. From such funds as may be appropriated for this purpose, sufficient funds shall be provided to hold all local school divisions harmless by providing no-loss funding which maintains the level of each school division's funding as allocated for drop-out prevention programs on July 1, 1996, if the level of funding for such school division's drop-out prevention programs would be less than its level of funding for such programs in fiscal year 1995. Effective on and after July 1, 1996, the Board of Education shall develop and implement a funding mechanism to ensure that no school board is penalized in its state funding for drop-out prevention programs for reducing the drop out rate in its school division.

3. Career education programs infused into the K through 12 curricula that promote knowledge of careers and all types of employment opportunities including but not limited to, apprenticeships, the military, and career education schools, and emphasize the advantages of completing school with marketable skills. School boards may include career exploration opportunities in the middle school grades.

4. Competency-based vocational education programs, which integrate academic outcomes, career guidance and job-seeking skills for all secondary students including those identified as handicapped that reflect employment opportunities, labor market needs, applied basic skills, job-seeking skills, and career guidance. Career guidance shall include employment counseling designed to furnish information on available employment opportunities to all students, including those identified as handicapped, and placement services for students exiting school. Each school board shall develop and implement a plan to ensure compliance with the provisions of this subsection.

5. Academic and vocational preparation for students who plan to continue their education beyond secondary school or who plan to enter employment.

6. Early identification of handicapped students and enrollment of such students in appropriate instructional programs consistent with state and federal law.

7. Early identification of gifted students and enrollment of such students in appropriately differentiated instructional programs.

8. Educational alternatives for students whose needs are not met in programs prescribed elsewhere in these standards. Such students shall be counted in average daily membership (ADM) in accordance with the regulations of the Board of Education.

9. Adult education programs for individuals functioning below the high school completion level. Such programs may be conducted by the school board as the primary agency or through a collaborative arrangement between the school board and other agencies.

10. A plan to make achievements for students who are educationally at risk a divisionwide priority which shall include procedures for measuring the progress of such students.

E. Each local school board shall employ with state and local basic, special education, gifted, and vocational 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 shall adjust their average daily membership for kindergarten to reflect eighty-five percent of the total kindergarten average daily memberships.

F. In addition to the positions supported by basic aid and in support of regular school year remedial programs, 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 estimated to score in the bottom national quartile on Virginia State Assessment Program Tests and those who fail the literacy tests or Standards of Learning assessments for grades three, five, and eight prescribed by the Board. State funding for remedial 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. The Board of Education shall establish criteria for identification of educationally at-risk students, which shall not be construed to be regulations as defined in § 9-6.14:4; however, the Board of Education may, from time to time, revise these identification criteria. In order to provide appropriate opportunity for input from the general public, teachers, and local school boards, the Board of Education shall conduct public hearings prior to establishing or revising such identification criteria. Thirty days prior to conducting such hearings, the Board shall give written notice by mail of the date, time, and place of the hearings to all local school boards and any other persons requesting to be notified of the hearings and publish notice of its intention to establish or revise such identification criteria in the Virginia Register of Regulations. Interested parties shall be given reasonable opportunity to be heard and present information prior to final adoption of any such identification criteria or revisions thereto.

G. Licensed instructional personnel shall be assigned by each school board in a manner that produces divisionwide ratios of students in average daily membership to full-time equivalent teaching positions,

183 excluding special education teachers, principals, assistant principals, counselors, and librarians, that are  
184 not greater than the following ratios: (i) twenty-five to one in kindergarten with no class being larger  
185 than thirty students; if the average daily membership in any kindergarten class exceeds twenty-five  
186 pupils, a full-time teacher's aide shall be assigned to the class; (ii) twenty-four to one in grade one with  
187 no class being larger than thirty students; (iii) twenty-five to one in grades two and three with no class  
188 being larger than thirty students; (iv) twenty-five to one in grades four through six with no class being  
189 larger than thirty-five students; and (v) twenty-four to one in English classes in grades six through  
190 twelve.

191 Further, pursuant to the appropriation act, school boards may implement in kindergarten through third  
192 grade, within certain schools, lower ratios of students in average daily membership to full-time  
193 equivalent teaching positions by assigning instructional personnel in a manner that produces ratios of  
194 students in average daily membership to full-time equivalent teaching positions, excluding special  
195 education teachers, principals, assistant principals, counselors, and librarians, as follows: (i) in schools  
196 having high concentrations of at-risk students, eighteen to one; and (ii) in schools having moderate  
197 concentrations of at-risk students, twenty to one. For the purposes of this subsection, "schools having  
198 high concentrations of at-risk students" and "schools having moderate concentrations of at-risk students"  
199 shall be defined in the appropriation act.

200 In addition, instructional personnel shall be assigned by each school board in a manner that produces  
201 schoolwide ratios of students in average daily memberships to full-time equivalent teaching positions of  
202 twenty-five to one in middle schools and high schools.

203 School boards shall, however, annually, on or before January 1, report to the public the actual  
204 pupil-teacher ratios in elementary school classrooms by school for the current school year. Such actual  
205 ratios shall include only the teachers who teach the grade and class on a full-time basis and shall  
206 exclude resource personnel. School boards shall report pupil-teacher ratios which include resource  
207 teachers in the same annual report. Any classes funded through the voluntary kindergarten through third  
208 grade at-risk student/lower ratio program shall be identified as such classes. Any classes having waivers  
209 to exceed the requirements of this subsection shall also be identified. Schools shall be identified;  
210 however, the data shall be compiled in a manner to ensure the confidentiality of all teacher and pupil  
211 identities.

212 H. Students enrolled in a public school on a less than full-time basis shall be counted in average  
213 daily membership (ADM) in the relevant school division. Students who are either (i) enrolled in a  
214 nonpublic school or (ii) receiving home instruction pursuant to § 22.1-254.1, and who are enrolled in  
215 public school on a less than full-time basis in any mathematics, science, English, history, social science,  
216 vocational education, fine arts, ~~or~~ foreign language, *or health education or physical education* course  
217 shall be counted in the average daily membership (ADM) in the relevant school division on a pro rata  
218 basis as provided in the appropriation act. However, no such nonpublic or home school student shall be  
219 counted as more than one-half a student for purposes of such pro rata calculation. Such calculation shall  
220 not include enrollments of such students in any other public school courses.

221 § 22.1-253.13:1. (Effective July 1, 2003) Standard 1. Basic skills, selected programs, and instructional  
222 personnel.

223 A. The General Assembly and the Board of Education believe that the fundamental goal of the  
224 public schools of this Commonwealth must be to enable each student to develop the skills that are  
225 necessary for success in school and preparation for life, and find that the quality of education is  
226 dependent upon the provision of the appropriate working environment, benefits, and salaries necessary to  
227 ensure the availability of high quality instructional personnel and adequate commitment of other  
228 resources.

229 B. The Board of Education shall establish educational objectives to implement the development of  
230 the skills that are necessary for success in school and for preparation for life in the years beyond. The  
231 current educational objectives, known as the Standards of Learning, shall not be construed to be  
232 regulations as defined in § 9-6.14:4; however, the Board of Education may, from time to time, revise  
233 these educational objectives to maintain academic rigor. In order to provide appropriate opportunity for  
234 input from the general public, teachers, and local school boards, the Board of Education shall conduct  
235 public hearings prior to establishing new educational objectives. Thirty days prior to conducting such  
236 hearings, the Board shall give written notice by mail of the date, time, and place of the hearings to all  
237 local school boards and any other persons requesting to be notified of the hearings and publish notice of  
238 its intention to revise these educational objectives in the Virginia Register of Regulations. Interested  
239 parties shall be given reasonable opportunity to be heard and present information prior to final adoption  
240 of any revisions of these educational objectives.

241 The Board shall seek to ensure that any revised educational objectives are consistent with the world's  
242 highest educational standards. These objectives shall include, but not be limited to, basic skills of  
243 communication, computation and critical reasoning including problem solving and decision making and  
244 the skills to manage personal finances and to make sound financial decisions, and the development of

personal qualities such as self-esteem, sociability, self-management, integrity, and honesty.

With such funds as are made available for this purpose, the Board shall regularly review and revise the competencies for vocational education programs to require the full integration of English, mathematics, science and social studies Standards of Learning. Occupational vocational programs shall be aligned with industry and professional standard certifications, where they exist.

The Standards of Learning in all subject areas shall be subject to regular review and revision to maintain rigor and to reflect a balance between content knowledge and the application of knowledge in preparation for eventual employment and lifelong learning.

School boards shall implement these objectives or objectives specifically designed for their school divisions that are equivalent to or exceed the Board's requirements. Students shall be expected to achieve the educational objectives utilized by the school division at appropriate age or grade levels.

With such funds as are available for this purpose, the Board of Education may prescribe assessment methods to determine the level of achievement of these objectives by all students. Such assessments shall evaluate knowledge, application of knowledge, critical thinking, and skills related to the Standards of Learning being assessed. The Board, with the assistance of independent testing experts, shall conduct a regular analysis and validation process for these assessments.

By July 1, 1999, the Board shall develop and approve objectives for mathematics, at the middle and high school levels, for personal living and finances, which shall focus on money management skills for individuals and families. The personal living and finances objectives shall require instruction in those skills necessary to handle personal business and finances and shall include, but need not be limited to, the following: opening a bank account and how to judge the quality of a bank's services; balancing a check book; completing a loan application; the implications of an inheritance; the basics of personal insurance policies; consumer rights and responsibilities; dealing with salesmen and merchants; debt management, including retail and credit card debt; state and federal tax computation; local tax assessments; computation of interest rates by various mechanisms; understanding simple contracts; and how to contest an incorrect bill. These personal living and finances objectives shall not be required to be included in the Board's Standards of Learning, and shall be developed in a manner to ensure that instruction in the Standards of Learning shall not be de-emphasized. The Board shall not be required to evaluate student achievement concerning such objectives in the Standards of Learning Assessment Tests required by § 22.1-253.13:3.

C. Local school boards shall develop and implement a program of instruction for grades K through 12 which emphasizes reading, writing, speaking, mathematical concepts and computations, technological proficiency, and scientific concepts and processes; essential skills and concepts of citizenship, including knowledge of history, economics, government, foreign languages, international cultures, health, environmental issues and geography necessary for responsible participation in American society and in the international community; fine arts and practical arts; knowledge and skills needed to qualify for further education and employment or, in the case of some handicapped children, to qualify for appropriate training; and development of the ability to apply such skills and knowledge in preparation for eventual employment and lifelong learning.

Local school boards shall also develop and implement programs of prevention, intervention, or remediation for students who are educationally at risk including, but not limited to, those whose scores are in the bottom national quartile on Virginia State Assessment Program Tests, or who fail to achieve a passing score on any Standards of Learning assessment in grades three, five, and eight. Such programs may include summer school for all elementary and middle school grades and for all high school academic courses, as defined by regulations promulgated by the Board of Education, or other forms of remediation. Division superintendents shall require such students to take special programs of prevention, intervention, or remediation which may include attendance in public summer school programs, in accordance with subsection E of § 22.1-254 and § 22.1-254.01. The requirement for remediation may, however, be satisfied by the student's attendance in a program of prevention, intervention or remediation which has been selected by his parent and is either (i) conducted by an accredited private school or (ii) a special program which has been determined to be comparable to the required public school remediation program by the division superintendent. The costs of such private school remediation program or other special remediation program shall be borne by the student's parent. Students required to attend such summer school programs or to participate in another form of remediation shall not be charged tuition by the local school division. Based on the number of students attending and the Commonwealth's share of the per pupil costs, additional state funds shall be provided for summer and other remediation programs as set forth in the appropriation act.

Any student who does not pass all Standards of Learning assessments in grades three, five, and eight shall be required to attend a summer school program or participate in another form of remediation. Such summer school program or other form of remediation shall be chosen by the school division to be appropriate to the academic needs of the student. State funds shall be provided, as set forth in the

306 appropriation act, for the attendance in remediation programs conducted by local school divisions for  
307 students who do not pass all Standards of Learning assessments in grades three, five, and eight  
308 beginning with the 1998-99 fiscal year.

309 To ensure consistency in program quality, each school board may establish a remediation program  
310 standards committee which may include, but need not be limited to, the superintendent or his designee,  
311 a teacher, a parent, and one representative of the community at large. The remediation program  
312 standards committee shall recommend the program components for the remediation programs and shall  
313 evaluate the success of the programs. Such program components may include transition mechanisms for  
314 children to ensure the smooth movement between remediation programs and regular programs,  
315 pupil/teacher ratios, objectives, and time, site, and duration of the various programs.

316 Such remediation programs shall include, when applicable, a procedure for early identification of  
317 students who are at-risk of academic failure of the Standards of Learning assessments in grades three,  
318 five, and eight. The identified students shall be provided appropriate remediation activities.

319 The Board of Education shall establish standards for full funding of summer remedial programs  
320 which shall include, but not be limited to, the minimum number of instructional hours or the equivalent  
321 thereof required for full funding and an assessment system designed to evaluate program effectiveness.  
322 Based on the number of students attending and the Commonwealth's share of the per pupil instructional  
323 costs, state funds shall be provided for the full cost of summer and other remediation programs as set  
324 forth in the appropriation act, provided such programs comply with such standards as shall be  
325 established by the Board, pursuant to § 22.1-199.2.

326 D. Local school boards shall also implement the following:

327 1. Programs in grades K through 3 which emphasize developmentally appropriate learning to enhance  
328 success.

329 2. Programs based on prevention, intervention, or retrieval designed to increase the number of  
330 students who earn a high school diploma or general education development (GED) certificate. As  
331 provided in the appropriation act, state funding, in addition to basic aid, shall be allocated to support  
332 programs grounded in sound educational policy to reduce the number of students who drop out of  
333 school. From such funds as may be appropriated for this purpose, sufficient funds shall be provided to  
334 hold all local school divisions harmless by providing no-loss funding which maintains the level of each  
335 school division's funding as allocated for drop-out prevention programs on July 1, 1996, if the level of  
336 funding for such school division's drop-out prevention programs would be less than its level of funding  
337 for such programs in fiscal year 1995. Effective on and after July 1, 1996, the Board of Education shall  
338 develop and implement a funding mechanism to ensure that no school board is penalized in its state  
339 funding for drop-out prevention programs for reducing the drop out rate in its school division.

340 3. Career education programs infused into the K through 12 curricula that promote knowledge of  
341 careers and all types of employment opportunities including but not limited to, apprenticeships, the  
342 military, and career education schools, and emphasize the advantages of completing school with  
343 marketable skills. School boards may include career exploration opportunities in the middle school  
344 grades.

345 4. Competency-based vocational education programs, which integrate academic outcomes, career  
346 guidance and job-seeking skills for all secondary students including those identified as handicapped that  
347 reflect employment opportunities, labor market needs, applied basic skills, job-seeking skills, and career  
348 guidance. Career guidance shall include employment counseling designed to furnish information on  
349 available employment opportunities to all students, including those identified as handicapped, and  
350 placement services for students exiting school. Each school board shall develop and implement a plan to  
351 ensure compliance with the provisions of this subsection.

352 5. Academic and vocational preparation for students who plan to continue their education beyond  
353 secondary school or who plan to enter employment.

354 6. Early identification of handicapped students and enrollment of such students in appropriate  
355 instructional programs consistent with state and federal law.

356 7. Early identification of gifted students and enrollment of such students in appropriately  
357 differentiated instructional programs.

358 8. Educational alternatives for students whose needs are not met in programs prescribed elsewhere in  
359 these standards. Such students shall be counted in average daily membership (ADM) in accordance with  
360 the regulations of the Board of Education.

361 9. Adult education programs for individuals functioning below the high school completion level.  
362 Such programs may be conducted by the school board as the primary agency or through a collaborative  
363 arrangement between the school board and other agencies.

364 10. A plan to make achievements for students who are educationally at risk a divisionwide priority  
365 which shall include procedures for measuring the progress of such students.

366 E. Each local school board shall employ with state and local basic, special education, gifted, and  
367 vocational 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 shall adjust their average daily membership for kindergarten to reflect eighty-five percent of the total kindergarten average daily memberships.

F. In addition to the positions supported by basic aid and in support of regular school year remedial programs, 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 estimated to score in the bottom national quartile on Virginia State Assessment Program Tests and those who fail the literacy tests or Standards of Learning assessments for grades three, five, and eight prescribed by the Board. State funding for remedial 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. The Board of Education shall establish criteria for identification of educationally at-risk students, which shall not be construed to be regulations as defined in § 9-6.14:4; however, the Board of Education may, from time to time, revise these identification criteria. In order to provide appropriate opportunity for input from the general public, teachers, and local school boards, the Board of Education shall conduct public hearings prior to establishing or revising such identification criteria. Thirty days prior to conducting such hearings, the Board shall give written notice by mail of the date, time, and place of the hearings to all local school boards and any other persons requesting to be notified of the hearings and publish notice of its intention to establish or revise such identification criteria in the Virginia Register of Regulations. Interested parties shall be given reasonable opportunity to be heard and present information prior to final adoption of any such identification criteria or revisions thereto.

G. Licensed instructional personnel shall be assigned by each school board 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) twenty-five to one in kindergarten with no class being larger than thirty students; if the average daily membership in any kindergarten class exceeds twenty-five pupils, a full-time teacher's aide shall be assigned to the class; (ii) twenty-four to one in grade one with no class being larger than thirty students; (iii) twenty-five to one in grades two and three with no class being larger than thirty students; (iv) twenty-five to one in grades four through six with no class being larger than thirty-five students; and (v) twenty-four to one in English classes in grades six through twelve.

Further, pursuant to the appropriation act, school boards may implement in kindergarten through third grade, within certain schools, lower ratios of students in average daily membership to full-time equivalent teaching positions by assigning instructional personnel in a manner that produces ratios of students in average daily membership to full-time equivalent teaching positions, excluding special education teachers, principals, assistant principals, counselors, and librarians, as follows: (i) in schools having high concentrations of at-risk students, eighteen to one; and (ii) in schools having moderate concentrations of at-risk students, twenty to one. For the purposes of this subsection, "schools having high concentrations of at-risk students" and "schools having moderate concentrations of at-risk students" shall be defined in the appropriation act.

In addition, instructional personnel shall be assigned by each school board in a manner that produces schoolwide ratios of students in average daily memberships to full-time equivalent teaching positions of twenty-five to one in middle schools and high schools.

School boards shall, however, annually, on or before January 1, report to the public the actual pupil/teacher ratios in elementary school classrooms by school for the current school year. Such actual 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 which include resource teachers in the same annual report. Any classes funded through the voluntary kindergarten through third grade at-risk student/lower ratio 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.

H. Students enrolled in a public school on a less than full-time basis shall be counted in average daily membership (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, vocational education, fine arts, ~~or~~ foreign language, *or health education or physical education* course shall be counted in the average daily membership (ADM) in the relevant school division on a pro rata basis as provided in the appropriation act. 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

**429** not include enrollments of such students in any other public school courses.