

VIRGINIA ACTS OF ASSEMBLY -- 2016 SESSION

CHAPTER 726

An Act to amend the Code of Virginia by adding a section numbered 16.1-274.2, relating to minors; education records; evidence.

[H 1213]

Approved April 8, 2016

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 16.1-274.2 as follows:

§ 16.1-274.2. Certain education records as evidence.

A. In any proceeding where (i) a juvenile is alleged to have committed a delinquent act that would be a misdemeanor if committed by an adult and whether such act was committed intentionally or willfully by the juvenile is an element of the delinquent act and (ii) such act was committed (a) during school hours, and during school-related or school-sponsored activities upon the property of a public or private elementary or secondary school or child day center; (b) on any school bus as defined in § 46.2-100; or (c) upon any property, public or private, during hours when such property is solely being used by a public or private elementary or secondary school for a school-related or school-sponsored activity, the juvenile shall be permitted to introduce into evidence as relevant to whether he acted intentionally or willfully any document created prior to the commission of the alleged delinquent act that relates to (a) an Individualized Education Program developed pursuant to the federal Individuals with Disabilities Education Act, 20 U.S.C. § 1400 et seq.; (b) a Section 504 Plan prepared pursuant to § 504 of the federal Rehabilitation Act of 1973, 29 U.S.C. § 794; (c) a behavioral intervention plan as defined in 8VAC20-81-10; or (d) a functional behavioral assessment as defined in 8VAC20-81-10.

Any such document shall be admitted as evidence of the facts stated therein.

B. At least 10 days prior to the commencement of the proceeding in which a document listed in subsection A will be offered as evidence, the juvenile intending to offer the document shall notify the attorney for the Commonwealth, in writing, of the intent to offer the document and shall provide or make available copies of the document to be introduced.

C. Copies of documents listed in subsection A shall be received as evidence, provided that such copies are authenticated to be true and accurate copies by the custodian thereof, or by the person to whom the custodian reports if they are different. An affidavit signed by the custodian of such documents, or by the person to whom the custodian reports if they are different, stating that such documents are true and accurate copies of such documents shall be valid authentication for the purposes of this section.

D. Upon motion of the juvenile, any document admitted pursuant to this section shall be placed under seal by the court.