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SENATE BILL NO. 390

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the Senate Committee on Education and Health
on February 6, 2020)

(Patron Prior to Substitute—Senator McPike)

A BILL to amend and reenact § 22.1-253.13:3 of the Code of Virginia, relating to Standards of Learning assessments; reform.

Be it enacted by the General Assembly of Virginia:

1. That § 22.1-253.13:3 of the Code of Virginia is amended and reenacted as follows:

§ 22.1-253.13:3. Standard 3. Accreditation, other standards, assessments, and releases from state regulations.

A. The Board of Education shall promulgate regulations establishing standards for accreditation pursuant to the Administrative Process Act (§ 2.2-4000 et seq.), which shall include student outcome measures, requirements and guidelines for instructional programs and for the integration of educational technology into such instructional programs, administrative and instructional staffing levels and positions, including staff positions for supporting educational technology, student services, auxiliary education programs such as library and media services, requirements for graduation from high school, community relations, and the philosophy, goals, and objectives of public education in Virginia.

The Board of Education shall promulgate regulations establishing standards for accreditation of public virtual schools under the authority of the local school board that enroll students full time.

The Board's regulations establishing standards for accreditation shall ensure that the accreditation process is transparent and based on objective measurements and that any appeal of the accreditation status of a school is heard and decided by the Board.

The Board shall review annually the accreditation status of all schools in the Commonwealth. The Board shall review the accreditation status of a school once every three years if the school has been fully accredited for three consecutive years. Upon such triennial review, the Board shall review the accreditation status of the school for each individual year within that triennial review period. If the Board finds that the school would have been accredited every year of that triennial review period the Board shall accredit the school for another three years. The Board may review the accreditation status of any other school once every two years or once every three years, provided that any school that receives a multiyear accreditation status other than full accreditation shall be covered by a Board-approved multiyear corrective action plan for the duration of the period of accreditation. Such multiyear corrective action plan shall include annual written progress updates to the Board. A multiyear accreditation status shall not relieve any school or division of annual reporting requirements.

Each local school board shall maintain schools that are fully accredited pursuant to the standards for accreditation as prescribed by the Board of Education. Each local school board shall report the accreditation status of all schools in the local school division annually in public session.

The Board shall establish a review process to assist any school that does not meet the standards established by the Board. The relevant school board shall report the results of such review and any annual progress reports in public session and shall implement any actions identified through such review and utilize them for improvement planning.

The Board shall establish a corrective action plan process for any school that does not meet the standards established by the Board. Such process shall require (i) each school board to submit a corrective action plan for any school in the local school division that does not meet the standards established by the Board and (ii) any school board that fails to demonstrate progress in developing or implementing any such corrective action plan to enter into a memorandum of understanding with the Board.

When the Board determines through its review process that the failure of schools within a division to meet the standards established by the Board is related to division-level failure to implement the Standards of Quality or other division-level action or inaction, the Board may require a division-level academic review. After the conduct of such review and within the time specified by the Board of Education, each school board shall enter into a memorandum of understanding with the Board and shall subsequently submit to the Board for approval a corrective action plan, consistent with criteria established by the Board setting forth specific actions and a schedule designed to ensure that schools within its school division meet the standards established by the Board. If the Board determines that the proposed corrective action plan is not sufficient to enable all schools within the division to meet the standards established by the Board, the Board may return the plan to the local school board with directions to submit an amended plan pursuant to Board guidance. Such corrective action plans shall be part of the relevant school division's comprehensive plan pursuant to § 22.1-253.13:6.

60 B. The Superintendent of Public Instruction shall develop and the Board of Education shall approve
61 criteria for determining and recognizing educational performance in the Commonwealth's public school
62 divisions and schools. Such criteria, when approved, shall become an integral part of the accreditation
63 process and shall include student outcome measurements. The Superintendent of Public Instruction shall
64 annually report to the Board on the accreditation status of all school divisions and schools. Such report
65 shall include an analysis of the strengths and weaknesses of public education programs in the various
66 school divisions in Virginia and recommendations to the General Assembly for further enhancing student
67 learning uniformly across the Commonwealth. In recognizing educational performance in the school
68 divisions, the Board shall include consideration of special school division accomplishments, such as
69 numbers of dual enrollments and students in Advanced Placement and International Baccalaureate
70 courses, and participation in academic year Governor's Schools.

71 The Superintendent of Public Instruction shall assist local school boards in the implementation of
72 action plans for increasing educational performance in those school divisions and schools that are
73 identified as not meeting the approved criteria. The Superintendent of Public Instruction shall monitor
74 the implementation of and report to the Board of Education on the effectiveness of the corrective actions
75 taken to improve the educational performance in such school divisions and schools.

76 C. With such funds as are available for this purpose, the Board of Education shall prescribe
77 assessment methods to determine the level of achievement of the Standards of Learning objectives by all
78 students. Such assessments shall evaluate knowledge, application of knowledge, critical thinking, and
79 skills related to the Standards of Learning being assessed. The Board shall, with the assistance of
80 independent testing experts, conduct a regular analysis and validation process for these assessments. The
81 Department of Education shall make available to school divisions Standards of Learning assessments
82 typically administered by the middle and high schools by December 1 of the school year in which such
83 assessments are to be administered or when newly developed assessments are available, whichever is
84 later.

85 The Board shall also provide the option of industry certification and state licensure examinations as a
86 student-selected credit.

87 The Board of Education shall make publicly available such assessments in a timely manner and as
88 soon as practicable following the administration of such tests, so long as the release of such assessments
89 does not compromise test security or deplete the bank of assessment questions necessary to construct
90 subsequent tests, or limit the ability to test students on demand and provide immediate results in the
91 web-based assessment system.

92 The Board shall include in the student outcome measures that are required by the Standards for
93 Accreditation end-of-course or end-of-grade assessments for various grade levels and classes, including
94 the completion of the alternative assessments implemented by each local school board, in accordance
95 with the Standards of Learning. These assessments shall include end-of-course or end-of-grade tests for
96 English, mathematics, science, and history and social science and may be integrated to include multiple
97 subject areas.

98 The Board shall prescribe alternative methods of Standards of Learning assessment administration for
99 children with disabilities, as that term is defined in § 22.1-213, who meet criteria established by the
100 Board to demonstrate achievement of the Standards of Learning. An eligible student's Individual
101 Education Program team shall make the final determination as to whether an alternative method of
102 administration is appropriate for the student.

103 The Standards of Learning assessments administered to students in *all* grades ~~three through eight~~ shall
104 *meet but not exceed* (a) reading and mathematics in grades three and four; (b) reading, mathematics, and
105 science in grade five; (c) reading and mathematics in grades six and seven; (d) reading, writing, and
106 mathematics in grade eight; (e) science after the student receives instruction in the grade six science, life
107 science, and physical science Standards of Learning and before the student completes grade eight; and
108 (f) Virginia Studies and Civics and Economics once each at the grade levels deemed appropriate by each
109 ~~local school board~~ *the minimum requirements established by the federal Elementary and Secondary*
110 *Education Act of 1965, P.L. 89-10, as amended.*

111 Each school board shall annually certify that it has provided instruction and administered an
112 alternative assessment, consistent with Board guidelines, to students in grades three through eight in
113 each Standards of Learning subject area in which a Standards of Learning assessment was not
114 administered during the school year. Such guidelines shall (1) (i) incorporate options for age-appropriate,
115 authentic performance assessments and portfolios with rubrics and other methodologies designed to
116 ensure that students are making adequate academic progress in the subject area and that the Standards of
117 Learning content is being taught; (2) (ii) permit and encourage integrated assessments that include
118 multiple subject areas; and (3) (iii) emphasize collaboration between teachers to administer and
119 substantiate the assessments and the professional development of teachers to enable them to make the
120 best use of alternative assessments.

121 Local school divisions shall provide targeted mathematics remediation and intervention to students in

grades six through eight who show computational deficiencies as demonstrated by their individual performance on any diagnostic test or grade-level Standards of Learning mathematics test that measures non-calculator computational skills.

The Department of Education shall award recovery credit to any student in grades three through eight who fails a Standards of Learning assessment in English reading or mathematics, receives remediation, and subsequently retakes and passes such an assessment, including any such student who subsequently retakes such an assessment on an expedited basis.

In addition, to assess the educational progress of students, the Board of Education shall ~~(A)~~ (a) develop appropriate assessments, which may include criterion-referenced tests and other assessment instruments that may be used by classroom teachers; ~~(B)~~ (b) select appropriate industry certification and state licensure examinations; and ~~(C)~~ (c) prescribe and provide measures, which may include nationally normed tests to be used to identify students who score in the bottom quartile at selected grade levels. An annual justification that includes evidence that the student meets the participation criteria defined by the Virginia Department of Education shall be provided for each student considered for the Virginia Grade Level Alternative. Each Individual Education Program team shall review such justification and make the final determination as to whether or not the Virginia Grade Level Alternative is appropriate for the student. The superintendent and the school board chairman shall certify to the Board of Education, as a part of certifying compliance with the Standards of Quality, that there is a justification in the Individual Education Program for every student who takes the Virginia Grade Level Alternative. Compliance with this requirement shall be monitored as a part of the special education monitoring process conducted by the Department of Education. The Board shall report to the Governor and General Assembly in its annual reports pursuant to § 22.1-18 any school division that is not in compliance with this requirement.

The Standards of Learning requirements, including all related assessments, shall be waived for any student awarded a scholarship under the Brown v. Board of Education Scholarship Program, pursuant to § 30-231.2, who is enrolled in a preparation program for a high school equivalency examination approved by the Board of Education or in an adult basic education program or an adult secondary education program to obtain the high school diploma or a high school equivalency certificate.

The Department of Education shall develop processes for informing school divisions of changes in the Standards of Learning.

The Board of Education may adopt special provisions related to the administration and use of any Standards of Learning test or tests in a content area as applied to accreditation ratings for any period during which the Standards of Learning content or assessments in that area are being revised and phased in. Prior to statewide administration of such tests, the Board of Education shall provide notice to local school boards regarding such special provisions.

The Board of Education shall not include in its calculation of the passage rate of a Standards of Learning assessment for the purposes of state accountability any student whose parent has decided to not have his child take such Standards of Learning assessment, unless such exclusions would result in the school's not meeting any required state or federal participation rate.

D. The Board of Education may pursue all available civil remedies pursuant to § 22.1-19.1 or administrative action pursuant to § 22.1-292.1 for breaches in test security and unauthorized alteration of test materials or test results.

The Board may initiate or cause to be initiated a review or investigation of any alleged breach in security, unauthorized alteration, or improper administration of tests, including the exclusion of students from testing who are required to be assessed, by local school board employees responsible for the distribution or administration of the tests.

Records and other information furnished to or prepared by the Board during the conduct of a review or investigation may be withheld pursuant to subdivision 10 of § 2.2-3705.3. However, this section shall not prohibit the disclosure of records to (i) a local school board or division superintendent for the purpose of permitting such board or superintendent to consider or to take personnel action with regard to an employee or (ii) any requester, after the conclusion of a review or investigation, in a form that (a) does not reveal the identity of any person making a complaint or supplying information to the Board on a confidential basis and (b) does not compromise the security of any test mandated by the Board. Any local school board or division superintendent receiving such records or other information shall, upon taking personnel action against a relevant employee, place copies of such records or information relating to the specific employee in such person's personnel file.

Notwithstanding any other provision of state law, no test or examination authorized by this section, including the Standards of Learning assessments, shall be released or required to be released as minimum competency tests, if, in the judgment of the Board, such release would breach the security of such test or examination or deplete the bank of questions necessary to construct future secure tests.

E. With such funds as may be appropriated, the Board of Education may provide, through an

183 agreement with vendors having the technical capacity and expertise to provide computerized tests and
184 assessments, and test construction, analysis, and security, for (i) web-based computerized tests and
185 assessments, including computer-adaptive Standards of Learning assessments, for the evaluation of
186 student progress during and after remediation and (ii) the development of a remediation item bank
187 directly related to the Standards of Learning.

188 F. To assess the educational progress of students as individuals and as groups, each local school
189 board shall require the use of Standards of Learning assessments, alternative assessments, and other
190 relevant data, such as industry certification and state licensure examinations, to evaluate student progress
191 and to determine educational performance. Each local school shall require the administration of
192 appropriate assessments to students, which may include criterion-referenced tests and teacher-made tests
193 and shall include the Standards of Learning assessments, the local school board's alternative assessments,
194 and the National Assessment of Educational Progress state-by-state assessment. Each school board shall
195 analyze and report annually, in compliance with any criteria that may be established by the Board of
196 Education, the results from the Stanford Achievement Test Series, Ninth Edition (Stanford Nine)
197 assessment, if administered, industry certification examinations, and the Standards of Learning
198 Assessments to the public.

199 The Board of Education shall not require administration of the Stanford Achievement Test Series,
200 Ninth Edition (Stanford Nine) assessment, except as may be selected to facilitate compliance with the
201 requirements for home instruction pursuant to § 22.1-254.1.

202 The Board shall include requirements for the reporting of the Standards of Learning assessment
203 scores and averages for each year, regardless of accreditation frequency, as part of the Board's
204 requirements relating to the School Performance Report Card. Such scores shall be disaggregated for
205 each school by student subgroups on the Virginia assessment program as appropriate and shall be
206 reported to the public within three months of their receipt. These reports (i) shall be posted on the
207 portion of the Department of Education's website relating to the School Performance Report Card, in a
208 format and in a manner that allows year-to-year comparisons, and (ii) may include the National
209 Assessment of Educational Progress state-by-state assessment.

210 G. Each local school division superintendent shall regularly review the division's submission of data
211 and reports required by state and federal law and regulations to ensure that all information is accurate
212 and submitted in a timely fashion. The Superintendent of Public Instruction shall provide a list of the
213 required reports and data to division superintendents annually. The status of compliance with this
214 requirement shall be included in the Board of Education's annual report to the Governor and the General
215 Assembly as required by § 22.1-18.

216 H. Any school board may request the Board of Education for release from state regulations or, on
217 behalf of one or more of its schools, for approval of an Individual School Accreditation Plan for the
218 evaluation of the performance of one or more of its schools as authorized for certain other schools by
219 the Standards for Accreditation pursuant to 8VAC20-131-280 C of the Virginia Administrative Code.
220 Waivers of regulatory requirements may be granted by the Board of Education based on submission of a
221 request from the division superintendent and chairman of the local school board. The Board of
222 Education may grant, for a period up to five years, a waiver of regulatory requirements that are not (i)
223 mandated by state or federal law or (ii) designed to promote health or safety. The school board shall
224 provide in its waiver request a description of how the releases from state regulations are designed to
225 increase the quality of instruction and improve the achievement of students in the affected school or
226 schools. The Department of Education shall provide (a) guidance to any local school division that
227 requests releases from state regulations and (b) information about opportunities to form partnerships with
228 other agencies or entities to any local school division in which the school or schools granted releases
229 from state regulations have demonstrated improvement in the quality of instruction and the achievement
230 of students.

231 The Board of Education may also grant local school boards waivers of specific requirements in
232 § 22.1-253.13:2, based on submission of a request from the division superintendent and chairman of the
233 local school board, permitting the local school board to assign instructional personnel to the schools with
234 the greatest needs, so long as the school division employs a sufficient number of personnel divisionwide
235 to meet the total number required by § 22.1-253.13:2 and all pupil/teacher ratios and class size
236 maximums set forth in subsection C of § 22.1-253.13:2 are met. The school board shall provide in its
237 request a description of how the waivers from specific Standards of Quality staffing standards are
238 designed to increase the quality of instruction and improve the achievement of students in the affected
239 school or schools. The waivers may be renewed in up to five-year increments, or revoked, based on
240 student achievement results in the affected school or schools.

241 **2. That the Department of Education shall annually report on the estimated projected and actual**
242 **savings from the implementation of this act and report the amount of such savings to the**
243 **Governor and the Chairmen of the House Committee on Appropriations and the Senate**
244 **Committee on Finance no later than the first day of each Regular Session of the General**

245 Assembly. Such amount shall be included in the total for Direct Aid to Public Education in any
246 general appropriation act.