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SENATE BILL NO. 564

Offered January 8, 2020

Prefiled January 7, 2020

A *BILL to amend and reenact §§ 22.1-214 and 32.1-64.1 of the Code of Virginia, relating to Virginia Hearing Loss Identification and Monitoring System; language development for children who are deaf or hard of hearing.*

Patron—Edwards

Referred to Committee on Education and Health

Be it enacted by the General Assembly of Virginia:**1. That §§ 22.1-214 and 32.1-64.1 of the Code of Virginia are amended and reenacted as follows:****§ 22.1-214. Board to prepare special education program for children with disabilities.**

A. The Board of Education shall prepare and supervise the implementation by each school division of a program of special education designed to educate and train children with disabilities between the ages defined in § 22.1-213 and may prepare and place in operation such program for such individuals of other ages. The program developed by the Board of Education shall be designed to ensure that all children with disabilities have available to them a free and appropriate education, including specially designed instruction to meet the unique needs of such children. The program shall require (i) that the hearing of each disabled child be tested prior to placement in a special education program *and that each year thereafter, each child identified as deaf or hard of hearing be evaluated in accordance with the language developmental milestones chosen by the advisory committee established in subsection E of § 32.1-64.1* and (ii) that a complete audiological assessment, including tests that will assess inner and middle ear functioning, be performed on each child who is deaf or hard of hearing or who fails the test required in clause (i). The school boards of the several school divisions, the Department for the Blind and Vision Impaired, the Department for the Deaf and Hard-of-Hearing, the Department of Health, and other state and local agencies that can or may be able to assist in providing educational and related services shall assist and cooperate with the Board of Education in the development of such program.

B. The Board of Education shall prescribe procedures to afford due process to children with disabilities and their parents or guardians and to school divisions in resolving disputes as to program placements, individualized education programs, tuition eligibility and other matters as defined in state or federal statutes or regulations. These procedures shall encourage the use of mediation as an informal means of resolving such disputes. Mediation shall not, however, be used to deny or delay the due process rights of parents or guardians. The procedures shall require that all testimony be given under oath or affirmation administered by the hearing officer.

C. The Board of Education may provide for final decisions to be made by a hearing officer. The parents and the school division shall have the right to be represented by legal counsel or other representative before such hearing officer without being in violation of the provisions of § 54.1-3904.

D. Any party aggrieved by the findings and decision made pursuant to the procedures prescribed pursuant to subsections B and C may, within 180 days of such findings and decision, bring a civil action in the circuit court for the jurisdiction in which the school division is located. In any such action, the court shall receive the records of the administrative proceedings, shall hear additional evidence at the request of a party, and basing its decision on the preponderance of the evidence, shall grant such relief as the court determines appropriate.

D1. In any action brought pursuant to subsection D, the court, in its discretion, may award reasonable attorney fees as part of the costs (i) to a prevailing party who is the parent of a child with a disability; (ii) to a prevailing party who is the Board of Education or a local school division against the attorney of a parent who files a complaint or a subsequent cause of action that is frivolous, unreasonable, or without foundation, or against the attorney of a parent who continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation; or (iii) to a prevailing party who is the Board of Education or a local school division against the attorney of a parent, or against the parent, if the parent's complaint or subsequent cause of action was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the cause of litigation.

Attorney fees may not be awarded relating to any meeting of the Individualized Education Plan (IEP) Team unless such meeting is convened as a result of an administrative proceeding or judicial action, or, at the discretion of the State, for a mediation described in subsection B.

E. Whenever the Board of Education, in its discretion, determines that a school division fails to establish and maintain programs of free and appropriate public education that comply with regulations

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59 established by the Board, the Board may withhold all special education moneys from the school division
60 and may use the payments that would have been available to such school division to provide special
61 education, directly or by contract, to eligible children with disabilities in such manner as the Board
62 considers appropriate.

63 F. The Board of Education shall supervise educational programs for children with disabilities by
64 other public agencies and shall ensure that the identification, evaluation, and placement of children with
65 disabilities and youth in education programs by other public agencies, as appropriate, are consistent with
66 the provisions of the Board of Education's special education regulations.

67 G. The Board of Education shall prescribe regulations to provide a range of assessment procedures
68 for the evaluation of children with disabilities. These regulations shall include provision for parents to
69 participate, if they so request, in the consideration of the assessment components to be used. However,
70 such regulations shall not require any local school board to exceed the requirements of federal law or
71 regulations for the identification and evaluation of children with disabilities.

72 **§ 32.1-64.1. Virginia Hearing Loss Identification and Monitoring System.**

73 A. In order to identify hearing loss at the earliest possible age among newborns ~~and, to provide early~~
74 ~~intervention for all infants so identified as having hearing loss, and to track the language development~~
75 ~~of children who are identified as deaf or hard of hearing,~~ the Commissioner shall establish and maintain
76 the Virginia Hearing Loss Identification and Monitoring System. This system shall be for the ~~purpose~~
77 ~~purposes~~ of identifying and monitoring infants with hearing loss to ensure that such infants receive
78 appropriate early intervention through treatment, therapy, training, and education ~~and tracking the~~
79 ~~language development of children who are identified as deaf or hard of hearing.~~

80 B. The Virginia Hearing Loss Identification and Monitoring System shall be initiated in all hospitals
81 with neonatal intensive care services, in all hospitals in the Commonwealth having newborn nurseries,
82 and in other birthing places or centers in the Commonwealth.

83 C. In all hospitals with neonatal intensive care services, the chief medical officer of such hospitals or
84 his designee shall identify infants at risk of hearing loss using criteria established by the Board.
85 Beginning on July 1, 1999, all infants shall be given a hearing screening test, regardless of whether or
86 not the infant is at risk of hearing loss, by the chief medical officer or his designee using methodology
87 approved by the Board. The test shall take place before the infant is discharged from the hospital to the
88 care of the parent or guardian or as the Board may by regulation provide.

89 In all other hospitals and other birthing places or centers, the chief medical officer or his designee or
90 the attending practitioner shall identify infants at risk of hearing loss using criteria established by the
91 Board.

92 D. Beginning on July 1, 2000, the Board shall provide by regulation for the giving of hearing
93 screening tests for all infants born in all hospitals. The Board's regulations shall establish when the
94 testing shall be offered and performed and procedures for reporting.

95 An infant whose hearing screening indicates the need for a diagnostic audiological examination shall
96 be offered such examination at a center approved by the Board of Health. As a condition of such
97 approval, such centers shall maintain suitable audiological support and medical and educational referral
98 practices.

99 E. The Commissioner shall appoint an advisory committee to assist in the design, implementation,
100 and revision of this identification and monitoring system. The advisory committee shall meet at least
101 four times per year. A chairman shall be elected annually by the advisory committee. The Department of
102 Health shall provide support services to the advisory committee. The advisory committee shall consist of
103 representatives from relevant groups including, but not limited to, the health insurance industry;
104 physicians, including at least one pediatrician or family practitioner, one otolaryngologist, and one
105 neonatologist; nurses representing newborn nurseries; audiologists; *at least one expert who researches*
106 *language outcomes for children who are deaf or hard of hearing and who uses the dual languages of*
107 *American Sign Language and English; at least one expert who researches language outcomes for*
108 *children who are deaf or hard of hearing and who use spoken English, with or without visual*
109 *supplements; hearing aid dealers and fitters; teachers of the deaf and hard of hearing; parents of children*
110 *who are deaf or hard of hearing; adults who are deaf or hard of hearing; hospital administrators; and*
111 *personnel of appropriate state agencies, including the Department of Medical Assistance Services, the*
112 *Department of Education, and the Department for the Deaf and Hard-of-Hearing. The Department of*
113 *Education, the Department for the Deaf and Hard-of-Hearing, and the Department of Behavioral Health*
114 *and Developmental Services shall cooperate with the Commissioner and the Board in implementing this*
115 *system.*

116 F. With the assistance of the advisory committee, the Board shall promulgate such rules and
117 regulations as may be necessary to implement this identification and monitoring system. These rules and
118 regulations shall include criteria, including current screening methodology, for the identification of
119 infants (i) with hearing loss and (ii) at risk of hearing loss and shall include the scope of the information
120 to be reported, reporting forms, screening protocols, appropriate mechanisms for follow-up, relationships

between the identification and monitoring system and other state agency programs or activities, and mechanisms for review and evaluation of the activities of the system. The identification and monitoring system shall collect the name, address, sex, race, and any other information determined to be pertinent by the Board, for infants who are screened pursuant to this section.

G. The advisory committee shall, after considering all existing language developmental milestones from the standardized norms and any relevant information regarding language developmental milestones, select language developmental milestone assessments for educators and early intervention specialists for use in assessing the language and literacy development of children from birth to age five who are deaf or hard of hearing. Such tools or assessments shall be appropriate for use, in both content and administration, with children who use American Sign Language, English, or both. With the assistance of the advisory committee, the Board shall disseminate the tools or assessments selected pursuant to this subsection to the Department of Behavioral Health and Developmental Services and the Department of Education.

G. H. In addition, the Board's regulations shall provide that any person making a determination that an infant (i) is at risk for hearing loss, (ii) has failed to pass a hearing screening been identified as deaf or hard of hearing, or (iii) was not successfully tested shall notify the parent or guardian of the infant, the infant's primary care practitioner, and the Commissioner. The Board may provide guidelines for the notification process.

H. I. No testing required to be performed or offered by this section shall be performed if the parents of the infant object to the test based on their bona fide religious convictions.