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SENATE BILL NO. 5100

Offered August 18, 2020

Prefiled August 18, 2020

A *BILL to amend and reenact § 22.1-254 of the Code of Virginia, relating to public schools; COVID-19-related student absences.*

Patrons—Dunnavant and Ruff

Referred to Committee on Education and Health

Be it enacted by the General Assembly of Virginia:

1. That § 22.1-254 of the Code of Virginia is amended and reenacted as follows:

§ 22.1-254. Compulsory attendance required; excuses and waivers; alternative education program attendance; exemptions from article.

A. As used in this subsection, "attend" includes participation in educational programs and courses at a site remote from the school with the permission of the school and in conformity with applicable requirements.

Except as otherwise provided in this article, every parent, guardian, or other person in the Commonwealth having control or charge of any child who will have reached the fifth birthday on or before September 30 of any school year and who has not passed the eighteenth birthday shall, during the period of each year the public schools are in session and for the same number of days and hours per day as the public schools, cause such child to attend a public school or a private, denominational, or parochial school or have such child taught by a tutor or teacher of qualifications prescribed by the Board of Education and approved by the division superintendent, or provide for home instruction of such child as described in § 22.1-254.1.

As prescribed in the regulations of the Board of Education, the requirements of this section may also be satisfied by causing a child to attend an alternative program of study or work/study offered by a public, private, denominational, or parochial school or by a public or private degree-granting institution of higher education. Further, in the case of any five-year-old child who is subject to the provisions of this subsection, the requirements of this section may be alternatively satisfied by causing the child to attend any public educational pre-kindergarten program, including a Head Start program, or in a private, denominational, or parochial educational pre-kindergarten program.

Instruction in the home of a child or children by the parent, guardian, or other person having control or charge of such child or children shall not be classified or defined as a private, denominational or parochial school.

The requirements of this section shall apply to (i) any child in the custody of the Department of Juvenile Justice or the Department of Corrections who has not passed his eighteenth birthday and (ii) any child whom the division superintendent has required to take a special program of prevention, intervention, or remediation as provided in subsection C of § 22.1-253.13:1 and in § 22.1-254.01. The requirements of this section shall not apply to (a) any person 16 through 18 years of age who is housed in an adult correctional facility when such person is actively pursuing the achievement of a passing score on a high school equivalency examination approved by the Board of Education but is not enrolled in an individual student alternative education plan pursuant to subsection E, and (b) any child who has obtained a high school diploma or its equivalent, a certificate of completion, or has achieved a passing score on a high school equivalency examination approved by the Board of Education, or who has otherwise complied with compulsory school attendance requirements as set forth in this article.

B. A school board shall excuse from attendance at school:

1. Any pupil who, together with his parents, by reason of bona fide religious training or belief is conscientiously opposed to attendance at school. For purposes of this subdivision, "bona fide religious training or belief" does not include essentially political, sociological or philosophical views or a merely personal moral code; and

2. On the recommendation of the juvenile and domestic relations district court of the county or city in which the pupil resides and 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, upon consideration of the recommendation of the principal and division superintendent, to be justified.

C. Each local school board shall develop policies for excusing students who are absent by reason of

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59 observance of a religious holiday. Such policies shall ensure that a student shall not be deprived of any
60 award or of eligibility or opportunity to compete for any award, or of the right to take an alternate test
61 or examination, for any which he missed by reason of such absence, if the absence is verified in a
62 manner acceptable to the school board.

63 D. A school board may excuse from attendance at school:

64 1. On recommendation of the principal and the division superintendent and with the written consent
65 of the parent or guardian, any pupil who the school board determines, in accordance with regulations of
66 the Board of Education, cannot benefit from education at such school; or

67 2. On recommendation of the juvenile and domestic relations district court of the county or city in
68 which the pupil resides, any pupil who, in the judgment of such court, cannot benefit from education at
69 such school.

70 E. Local school boards may allow the requirements of subsection A to be met under the following
71 conditions:

72 For a student who is at least 16 years of age, there shall be a meeting of the student, the student's
73 parents, and the principal or his designee of the school in which the student is enrolled in which an
74 individual student alternative education plan shall be developed in conformity with guidelines prescribed
75 by the Board, which plan must include:

76 1. Career guidance counseling;

77 2. Mandatory enrollment and attendance in a preparatory program for passing a high school
78 equivalency examination approved by the Board of Education or other alternative education program
79 approved by the local school board with attendance requirements that provide for reporting of student
80 attendance by the chief administrator of such preparatory program or approved alternative education
81 program to such principal or his designee;

82 3. Mandatory enrollment in a program to earn a Board of Education-approved career and technical
83 education credential, such as the successful completion of an industry certification, a state licensure
84 examination, a national occupational competency assessment, the Armed Services Vocational Aptitude
85 Battery, or the Virginia workplace readiness skills assessment;

86 4. Successful completion of the course in economics and personal finance required to earn a Board
87 of Education-approved high school diploma;

88 5. Counseling on the economic impact of failing to complete high school; and

89 6. Procedures for reenrollment to comply with the requirements of subsection A.

90 A student for whom an individual student alternative education plan has been granted pursuant to this
91 subsection and who fails to comply with the conditions of such plan shall be in violation of the
92 compulsory school attendance law, and the division superintendent or attendance officer of the school
93 division in which such student was last enrolled shall seek immediate compliance with the compulsory
94 school attendance law as set forth in this article.

95 Students enrolled with an individual student alternative education plan shall be counted in the
96 average daily membership of the school division.

97 F. A school board may, in accordance with the procedures set forth in Article 3 (§ 22.1-276.01 et
98 seq.) of Chapter 14 and upon a finding that a school-age child has been (i) charged with an offense
99 relating to the Commonwealth's laws, or with a violation of school board policies, on weapons, alcohol
100 or drugs, or intentional injury to another person; (ii) found guilty or not innocent of a crime that
101 resulted in or could have resulted in injury to others, or of an offense that is required to be disclosed to
102 the superintendent of the school division pursuant to subsection G of § 16.1-260; (iii) suspended
103 pursuant to § 22.1-277.05; or (iv) expelled from school attendance pursuant to § 22.1-277.06 or
104 22.1-277.07 or subsection C of § 22.1-277, require the child to attend an alternative education program
105 as provided in § 22.1-209.1:2 or 22.1-277.2:1.

106 G. Whenever a court orders any pupil into an alternative education program, including a program
107 preparing students for a high school equivalency examination approved by the Board of Education,
108 offered in the public schools, the local school board of the school division in which the program is
109 offered shall determine the appropriate alternative education placement of the pupil, regardless of
110 whether the pupil attends the public schools it supervises or resides within its school division.

111 The juvenile and domestic relations district court of the county or city in which a pupil resides or in
112 which charges are pending against a pupil, or any court in which charges are pending against a pupil,
113 may require the pupil who has been charged with (i) a crime that resulted in or could have resulted in
114 injury to others, (ii) a violation of Article 1 (§ 18.2-77 et seq.) of Chapter 5 of Title 18.2, or (iii) any
115 offense related to possession or distribution of any Schedule I, II, or III controlled substances to attend
116 an alternative education program, including, but not limited to, night school, adult education, or any
117 other education program designed to offer instruction to students for whom the regular program of
118 instruction may be inappropriate.

119 This subsection shall not be construed to limit the authority of school boards to expel, suspend, or
120 exclude students, as provided in §§ 22.1-277.04, 22.1-277.05, 22.1-277.06, 22.1-277.07, and 22.1-277.2.

As used in this subsection, the term "charged" means that a petition or warrant has been filed or is pending against a pupil.

H. Within one calendar month of the opening of school, each school board shall send to the parents or guardian of each student enrolled in the division a copy of the compulsory school attendance law and the enforcement procedures and policies established by the school board.

I. The provisions of this article shall not apply to:

1. Children suffering from contagious or infectious diseases while suffering from such diseases;

2. Children whose immunizations against communicable diseases have not been completed as provided in § 22.1-271.2;

3. Children under 10 years of age who live more than two miles from a public school unless public transportation is provided within one mile of the place where such children live;

4. Children between the ages of 10 and 17, inclusive, who live more than 2.5 miles from a public school unless public transportation is provided within 1.5 miles of the place where such children live; and

5. Children excused pursuant to subsections B and D; and

6. *Children diagnosed with COVID-19 or children with a household member diagnosed with COVID-19 while the child or household member is suffering from COVID-19.*

Further, any child who will not have reached his sixth birthday on or before September 30 of each school year whose parent or guardian notifies the appropriate school board that he does not wish the child to attend school until the following year because the child, in the opinion of the parent or guardian, is not mentally, physically, or emotionally prepared to attend school, may delay the child's attendance for one year.

The distances specified in subdivisions 3 and 4 of this subsection shall be measured or determined from the child's residence to the entrance to the school grounds or to the school bus stop nearest the entrance to the residence of such children by the nearest practical routes which are usable for walking or riding. Disease shall be established by the certificate of a reputable practicing physician in accordance with regulations adopted by the Board of Education.

J. Subject to guidelines established by the Department of Education, any student who is absent from school due to his mental or behavioral health shall be granted an excused absence.