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## HOUSE BILL NO. 398

## AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Education  
on February 5, 2024)

(Patron Prior to Substitute—Delegate McQuinn)

A BILL to amend and reenact §§ 22.1-276.01, 22.1-277, and 22.1-279.6 of the Code of Virginia, relating to public elementary and secondary schools; student discipline; evidence-based restorative disciplinary practices.

Be it enacted by the General Assembly of Virginia:

1. That §§ 22.1-276.01, 22.1-277, and 22.1-279.6 of the Code of Virginia are amended and reenacted as follows:

§ 22.1-276.01. Definitions.

A. For the purposes of this article, unless the context requires a different meaning:

"Alternative education program" includes night school, adult education, or any other education program designed to offer instruction to students for whom the regular program of instruction may be inappropriate.

"Bullying" means any aggressive and unwanted behavior that is intended to harm, intimidate, or humiliate the victim; involves a real or perceived power imbalance between the aggressor or aggressors and victim; and is repeated over time or causes severe emotional trauma. "Bullying" includes cyber bullying. "Bullying" does not include ordinary teasing, horseplay, argument, or peer conflict.

"Disruptive behavior" means a violation of school board regulations governing student conduct that interrupts or obstructs the learning environment.

"Dress or grooming code" means any practice, policy, or portion of a code of student conduct adopted by a school board that governs or restricts the attire, appearance, or grooming, including hairstyle, of any enrolled student.

"Evidence-based restorative disciplinary practice" means an evidence-based alternative disciplinary practice used to reduce suspensions, expulsions, and disciplinary referrals with an emphasis on fostering peer and staff relationships and repairing harm to the injured party, consistent with the practices set out in the Department's "Model Guidance for Positive, Preventative Code of Student Conduct Policy and Alternatives to Suspension" and any amendments thereto. "Evidence-based restorative disciplinary practice" includes community conferencing, community service, mentoring, a peer jury, peer mediation, positive behavioral interventions and supports, a restorative circle, and the Virginia Tiered Systems of Supports.

"Exclusion" means a Virginia school board's denial of school admission to a student who has been expelled or has been placed on a long-term suspension of more than 30 calendar days by another school board or a private school, either in Virginia or another state, or for whom admission has been withdrawn by a private school in Virginia or another state.

"Expulsion" means any disciplinary action imposed by a school board or a committee thereof, as provided in school board policy, whereby a student is not permitted to attend school within the school division and is ineligible for readmission for 365 calendar days after the date of the expulsion.

"Long-term suspension" means any disciplinary action whereby a student is not permitted to attend school for 11 to 45 school days.

"Short-term suspension" means any disciplinary action whereby a student is not permitted to attend school for a period not to exceed 10 school days.

B. For the purposes of §§ 22.1-277.04, 22.1-277.05, 22.1-277.2, and 22.1-277.2:1, "superintendent's designee" means a (i) trained hearing officer or (ii) professional employee within the administrative offices of the school division who reports directly to the division superintendent and who is not a school-based instructional or administrative employee.

§ 22.1-277. Suspensions and expulsions of students generally.

A. Students may be suspended or expelled from attendance at school for sufficient cause; however, in no cases may sufficient cause for suspensions include only instances of truancy.

B. Except as provided in subsection C or § 22.1-277.07 or 22.1-277.08, no student ~~in~~:

1. In preschool through grade three shall be suspended for more than three school days or expelled from attendance at school, unless (i) the offense involves physical harm or credible threat of physical harm to others or (ii) the local school board or the division superintendent or his designee finds that aggravating circumstances exist, as defined by the Department; or

2. Shall be suspended, expelled, or excluded from attendance at school without initiating at least one evidence-based restorative disciplinary practice unless the offense is listed in subsection G of § 16.1-260 or the division superintendent or his designee finds that aggravating circumstances exist, as defined by

60 *the Department.*

61 C. Any student for whom the division superintendent of the school division in which such student is  
62 enrolled has received a report pursuant to § 16.1-305.1 of an adjudication of delinquency or a conviction  
63 for an offense listed in subsection G of § 16.1-260 may be suspended or expelled from school  
64 attendance pursuant to this article.

65 D. The authority provided in § 22.1-276.2 for teachers to remove students from their classes in  
66 certain instances of disruptive behavior shall not be interpreted to affect the operation of § 22.1-277.04,  
67 22.1-277.05, or 22.1-277.06.

68 E. Notwithstanding the provisions of § 22.1-277.08, no school board shall be required to suspend or  
69 expel any student who holds a valid written certification for the use of cannabis oil issued by a  
70 practitioner in accordance with § 4.1-1601 for the possession or use of such oil in accordance with the  
71 student's individualized health plan and in compliance with a policy adopted by the school board.

72 *F. Except in cases in which the school division finds that aggravating circumstances exist in*  
73 *accordance with clause (ii) of subsection C of § 22.1-277.05, any school division may elect to place in*  
74 *an in-school suspension pending the initiation of at least one evidence-based restorative disciplinary*  
75 *practice as required by subdivision B 2 any student who is accused of violating any provision of the*  
76 *school board's code of student conduct, except the provision of such code that is required pursuant to*  
77 *subsection C of § 22.1-277.07, when such violation involves an offense listed in subsection G of*  
78 *§ 16.1-260 for which a law-enforcement investigation is pending.*

79 **§ 22.1-279.6. Board of Education guidelines and model policies for codes of student conduct;**  
80 **school board regulations.**

81 A. The Board of Education shall establish guidelines and develop model policies for codes of student  
82 conduct to aid local school boards in the implementation of such policies. The guidelines and model  
83 policies shall include (i) criteria for the removal of a student from a class, the use of suspension,  
84 expulsion, and exclusion as disciplinary measures, the grounds for suspension and expulsion and  
85 exclusion, and the procedures to be followed in such cases, including proceedings for such suspension,  
86 expulsion, and exclusion decisions and all applicable appeals processes; (ii) standards, consistent with  
87 state, federal and case laws, for school board policies on alcohol and drugs, gang-related activity,  
88 hazing, vandalism, trespassing, threats, search and seizure, disciplining of students with disabilities,  
89 intentional injury of others, self-defense, bullying, the use of electronic means for purposes of bullying,  
90 harassment, and intimidation, and dissemination of such policies to students, their parents, and school  
91 personnel; (iii) standards for in-service training of school personnel in and examples of the appropriate  
92 management of student conduct and student offenses in violation of school board policies; (iv) standards  
93 for dress or grooming codes; and (v) standards for reducing bias and harassment in the enforcement of  
94 any code of student conduct.

95 In accordance with the most recent enunciation of constitutional principles by the Supreme Court of  
96 the United States of America, the Board's standards for school board policies on alcohol and drugs and  
97 search and seizure shall include guidance for procedures relating to voluntary and mandatory drug  
98 testing in schools, including which groups may be tested, use of test results, confidentiality of test  
99 information, privacy considerations, consent to the testing, need to know, and release of the test results  
100 to the appropriate school authority.

101 In the case of suspension and expulsion, the procedures set forth in this article shall be the minimum  
102 procedures that the school board may prescribe.

103 B. School boards shall adopt and revise, as required by § 22.1-253.13:7 and in accordance with the  
104 requirements of this section, regulations on codes of student conduct that are consistent with, but may be  
105 more stringent than, the guidelines of the Board. School boards shall include in the regulations on codes  
106 of student conduct procedures for suspension, expulsion, and exclusion decisions and shall biennially  
107 review the model student conduct code to incorporate discipline options and alternatives, *including*  
108 *evidence-based restorative disciplinary practices*, to preserve a safe, nondisruptive environment for  
109 effective teaching and learning.

110 C. Each school board shall include in its code of student conduct prohibitions against hazing and  
111 profane or obscene language or conduct. School boards shall also cite in their codes of student conduct  
112 the provisions of § 18.2-56, which defines and prohibits hazing and imposes a Class 1 misdemeanor  
113 penalty for violations, that is, confinement in jail for not more than 12 months and a fine of not more  
114 than \$2,500, either or both.

115 D. Each school board shall include in its code of student conduct policies and procedures that  
116 include a prohibition against bullying. Such policies and procedures shall (i) be consistent with the  
117 standards for school board policies on bullying and the use of electronic means for purposes of bullying  
118 developed by the Board pursuant to subsection A and (ii) direct the principal or his designee to notify  
119 the parent of any student involved in an alleged incident of bullying within 24 hours of learning of the  
120 allegation of bullying.

121 Such policies and procedures shall not be interpreted to infringe upon the First Amendment rights of

students and are not intended to prohibit expression of religious, philosophical, or political views, provided that such expression does not cause an actual, material disruption of the work of the school.

E. A school board may regulate the use or possession of beepers or other portable communications devices and laser pointers by students on school property or attending school functions or activities and establish disciplinary procedures pursuant to this article to which students violating such regulations will be subject.

F. Nothing in this section shall be construed to require any school board to adopt policies requiring or encouraging any drug testing in schools. However, a school board may, in its discretion, require or encourage drug testing in accordance with the Board of Education's guidelines and model student conduct policies required by subsection A and the Board's guidelines for student searches required by § 22.1-279.7.

G. The Board of Education shall establish standards to ensure compliance with the federal Improving America's Schools Act of 1994 (Part F-Gun-Free Schools Act of 1994), as amended, in accordance with § 22.1-277.07.

This subsection shall not be construed to diminish the authority of the Board of Education or to diminish the Governor's authority to coordinate and provide policy direction on official communications between the Commonwealth and the United States government.

H. Each school board shall include in its code of student conduct a prohibition on possessing any tobacco product or nicotine vapor product, as those terms are defined in § 18.2-371.2, on a school bus, on school property, or at an on-site or off-site school-sponsored activity.

I. Any school board may include in its code of student conduct a dress or grooming code. Any dress or grooming code included in a school board's code of student conduct or otherwise adopted by a school board shall (i) permit any student to wear any religiously and ethnically specific or significant head covering or hairstyle, including hijabs, yarmulkes, headwraps, braids, locs, and cornrows; (ii) maintain gender neutrality by subjecting any student to the same set of rules and standards regardless of gender; (iii) not have a disparate impact on students of a particular gender; (iv) be clear, specific, and objective in defining terms, if used; (v) prohibit any school board employee from enforcing the dress or grooming code by direct physical contact with a student or a student's attire; and (vi) prohibit any school board employee from requiring a student to undress in front of any other individual, including the enforcing school board employee, to comply with the dress or grooming code.