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SENATE BILL NO. 738

Offered January 8, 2025

Prefiled September 18, 2024

A BILL to amend and reenact § 22.1-277 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 22.1-79.3:1, relating to public elementary and secondary schools; student discipline; student cell phone possession and use policies; development and implementation.

Patrons—Pekarsky, Hashmi and VanValkenburg

Referred to Committee on Education and Health

Be it enacted by the General Assembly of Virginia:

1. That § 22.1-277 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 22.1-79.3:1 as follows:

§ 22.1-79.3:1. Student cell phone possession and use policies; development and implementation.

A. Each school board shall develop and each public elementary and secondary school shall implement age-appropriate and developmentally appropriate policies relating to student cell phone possession and use on school property during regular school hours. Such policies shall:

1. Except as provided in subdivision 4, restrict, to the fullest extent possible, student cell phone possession and use in the classroom during regular school hours;

2. To the extent that student cell phone possession and use is otherwise permitted on school property outside of the classroom during regular school hours, regulate such possession and use with the objective of reducing any distractions in or disruptions to the learning environment, including bullying and harassment;

3. Ensure that implementation and enforcement of such policies (i) is the responsibility of the school administration, (ii) minimizes, to the extent possible, any conflict with the instructional responsibilities of teachers or any disturbance to instructional time, and (iii) does not involve any school resource officer, as defined in § 9.1-101, that may be employed in any school in the school division;

4. Permit any student, pursuant to an Individualized Education Plan or Section 504 Plan or if otherwise determined appropriate by the school board, to possess and use a cell phone on school property, including in the classroom, during regular school hours to monitor or address a health concern or as an accommodation or assistive technology support; and

5. Expressly prohibit any student from being suspended, expelled, or removed from class as a consequence of any violation of such policies.

B. Subsection A shall not be construed to require any school board to develop or any public elementary or secondary school to implement student cell phone possession and use policies that prohibit all cell phone use by students during regular school hours.

C. No violation of any student cell phone possession and use policy developed or implemented in accordance with subsection A shall alone constitute sufficient cause for a student's suspension or expulsion from attendance at school pursuant to § 22.1-277 or disruptive behavior authorizing a teacher to remove a student from class pursuant to § 22.1-276.2. Any violation of any such student cell phone possession and use policy that involves, coincides with, or results in an instance of disruptive behavior, as that term is defined in § 22.1-276.01, shall be addressed in accordance with the regulations on codes of student conduct adopted by each school board pursuant to subsection B of § 22.1-279.6.

§ 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 or only a violation of any student cell phone possession and use policy developed and implemented pursuant to § 22.1-79.3:1.

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

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

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

9/21/24 06:59

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