

## SENATE BILL NO. 491

## AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Education and Health

on \_\_\_\_\_)

(Patron Prior to Substitute—Senator Pekarsky)

*A BILL to amend the Code of Virginia by adding a section numbered 22.1-2.2, relating to public schools; right to free public elementary and secondary education; discrimination based on immigration status prohibited; requirements; civil cause of action.*

**Be it enacted by the General Assembly of Virginia:****1. That the Code of Virginia is amended by adding a section numbered 22.1-2.2 as follows:**

***§ 22.1-2.2. Right to a free public education; discrimination based on citizenship or immigration status prohibited; requirements.***

**A. As used in this section:**

*"Directory information" means the same as that term is defined by the federal Family Educational Rights and Privacy Act (20 U.S.C. § 1232g).*

*"Immigration or citizenship status" means the status applied to any individual based on such individual's citizenship in the United States or any other country or such individual's authority or lack thereof to be lawfully present or reside in the United States.*

*"Law-enforcement agent" includes any (i) law-enforcement officer, as defined in § 9.1-101; (ii) federal immigration officer; and (iii) law-enforcement officer of any agency of the Commonwealth or its political subdivisions or the federal government whose duties include immigration-related enforcement.*

*"Nonjudicial warrant" means a warrant issued by a federal, state, or local agency authorized with the power to arrest or detain individuals or manage the custody of detained individuals for any law-enforcement purpose, including immigration enforcement, that has not been issued or signed by a judge or magistrate upon a determination of probable cause consistent with the requirements of the Fourth Amendment to the Constitution of the United States.*

*"School resource officer" means the same as that term is defined in § 9.1-101.*

**B. In accordance with Article VIII, Section 1 of the Constitution of Virginia and consistent with the requirements of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, no child in the Commonwealth shall be denied a free public education through secondary school on the basis of the actual or perceived immigration or citizenship status of such child or the child's parents.**

**C. Pursuant to subsection B, no school board, public elementary or secondary school, school resource**

officer employed by a local law-enforcement agency in any public elementary or secondary school, or any individual who is an employee, contractor, or agent of a school board shall:

1. Exclude from or prohibit enrollment in the school division of any child of school age that resides within the school division pursuant to § 22.1-3 on the basis of the actual or perceived immigration or citizenship status of such child or the child's parents;

2. Exclude a child from participation in or deny a child the benefits of any program or activity on the basis of the actual or perceived immigration or citizenship status of such child or the child's parents;

3. Implement or use any policies or procedures or otherwise engage in processes that would have the effect of (i) excluding a child from participation in or denying such child the benefits of any program or activity available to other students or (ii) excluding the participation of a child's parent from any parental engagement activities or programs available to other parents of students, on the basis of the actual or perceived immigration or citizenship status of such child or the child's parents, including any policy, procedure, or practice:

a. Requesting or collecting information or documentation from a student or the student's parent about immigration or citizenship status, except to the extent required by state or federal law; or

b. Designating immigration or citizenship status, country of origin or birth, nationality, or national origin as directory information; or

4. Perform any of the following actions:

a. Threaten to disclose any matter relating to the actual or perceived immigration or citizenship status of a child, the parent of a child, or another person associated with the child to any other person or entity, including any law-enforcement agent or immigration or law-enforcement agency;

b. If the school board or school does not have direct knowledge of the actual immigration or citizenship status of a child, the parent of a child, or another person associated with the child, disclose any matter or information relating to the perceived immigration or citizenship status of a child, the parent of a child, or another person associated with the child to any other person or agency, including any law-enforcement agent or immigration or law-enforcement agency, except as provided in subsection D; or

c. If the school board or school does have direct knowledge of the actual immigration or citizenship status of a child, the parent of a child, or another person associated with the child, disclose any matter or information relating to the actual immigration or citizenship status of a child, the parent of a child, or another person associated with the child to any other person or agency, including any law-enforcement agent or immigration or law-enforcement agency, except as provided in subsection D.

64 *D. Nothing in subdivision C 4 shall be construed to (i) permit the disclosure of student records or*  
65 *information without complying with the requirements of applicable state and federal law relating to the*  
66 *disclosure of such records or information; (ii) prohibit or restrict a school board, school, or other entity from*  
67 *sending to or receiving from the U.S. Department of Homeland Security or any other federal, state, or local*  
68 *governmental agency information relating to the immigration or citizenship status of an individual under 8*  
69 *U.S.C. §§ 1373 and 1644; or (iii) prohibit or restrict a school board, school, or other entity from disclosing*  
70 *any matter or information in exigent circumstances relating to student or faculty health or safety, except to*  
71 *the extent that such disclosure is relating to immigration enforcement or control.*

72 *E. Each public elementary and secondary school shall develop and implement procedures for reviewing*  
73 *and authorizing requests from law-enforcements agents, except any school resource officer employed in a*  
74 *school and operating under a memorandum of understanding with a local law-enforcement agency pursuant*  
75 *to § 22.1-280.2:3, attempting to enter a public school or public school facility, consistent with the provisions*  
76 *of this section, that include, at a minimum, procedures for:*

77 *1. Reviewing such requests and (i) contacting a designated authorized person at the school or school*  
78 *facility and the division superintendent's office or other office of the school board who can contact the school*  
79 *board's legal counsel and (ii) permitting such authorized person or legal counsel to review requests to enter*  
80 *a school or school facility, including reviewing any judicial warrants, nonjudicial warrants, and subpoenas;*

81 *2. Monitoring or accompanying law-enforcement agents and documenting all interactions with law-*  
82 *enforcement agents while on public school premises;*

83 *3. Notifying and seeking consent from a student's parent or, if the student is 18 years of age or older, the*  
84 *student, if a law-enforcement agent requests access to a student for purposes relating to immigration*  
85 *enforcement, except in the case that such access is in compliance with a judicial warrant or subpoena that*  
86 *restricts the disclosure of the information to the student's parent or guardian; and*

87 *4. Prohibiting any individual who is an employee, contractor, or agent of the school board or any school*  
88 *resource officer employed by a local law-enforcement agency in any public elementary or secondary school*  
89 *from (i) permitting, assisting with, or participating in the execution of any nonjudicial warrant by any law-*  
90 *enforcement agent present on school property for purposes relating to immigration enforcement and*  
91 *investigation or (ii) permitting any law-enforcement agent from accessing any area of school property that is*  
92 *not open to the public without a warrant signed by a judge or magistrate.*

93 *F. The provisions of subdivision E 4 shall not be construed to prohibit or limit any law-enforcement*  
94 *officer or other emergency personnel from entering a public school or public school facility for purposes*

95 relating to responding to an emergency, student or faculty health or safety, or other purposes not related to  
96 immigration enforcement or control.

97 G. Any party aggrieved by conduct that violates the provisions of this section may bring a civil action for  
98 injunctive relief, damages, and other relief available under law. The court, upon finding such violation  
99 occurred, may grant such relief as it deems appropriate, including actual damages for willful violations,  
100 injunctive relief, and temporary restraining orders. The court shall award reasonable attorney fees to a  
101 plaintiff who is a prevailing party in any action brought under this subsection. In awarding reasonable  
102 attorney fees, the court shall consider the degree to which the relief obtained relates to the relief sought. Any  
103 civil action brought under this subsection shall be brought no later than two years after the violation  
104 occurred.

105 **2. That the Department of Education shall develop and make available to each school board by August**  
106 **1, 2026, (i) guidance for school personnel, including administrative and front office staff, on the**  
107 **requirements of the first enactment of this act and (ii) training guidelines and materials for the training**  
108 **of all public elementary and secondary school principals and administrators on compliance with the**  
109 **provisions of the first enactment of this act.**

110 **3. That each school board shall (i) develop and implement by August 1, 2026, and post in a publicly**  
111 **accessible location on its website by the beginning of the 2026–2027 school year, policies and**  
112 **procedures in accordance with the first enactment of this act and (ii) require each public elementary**  
113 **and secondary school principal and administrator in the school division to complete training on**  
114 **compliance with the provisions of the first enactment of this act by the beginning of the 2026–2027**  
115 **school year, consistent with the training materials and guidance developed by the Department of**  
116 **Education pursuant to the second enactment of this act.**