

26106599D

SENATE BILL NO. 491

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the Senate Committee on Education and Health
on February 5, 2026)

(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:

"Aggrieved party" means any person directly and proximately harmed by conduct that violates the provisions of 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

SENATE SUBSTITUTE

SB491S1

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.

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

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

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

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

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

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

F. The provisions of subdivision E 4 shall not be construed to prohibit or limit any law-enforcement officer or other emergency personnel from entering a public school or public school facility for purposes relating to responding to an emergency, student or faculty health or safety, or other purposes not related to immigration enforcement or control.

G. Any aggrieved party may bring a civil action for injunctive relief, damages, and other relief available under law. Prior to initiating any civil action under this section, the aggrieved party shall provide to the division superintendent and the clerk of the school board written notice that shall set forth with reasonable specificity the nature of and grounds for the alleged violation of the provisions of this section and identify the relief or remedial action sought. Upon receipt of such notice, the school division shall have 15 days to investigate, address, and, if warranted, cure the alleged violation, including by providing the appropriate relief or taking the appropriate remedial or corrective action. No civil action shall be filed until the expiration of such 15-day period, provided, however, that any aggrieved party may seek temporary or preliminary relief without providing such prior notice if the aggrieved party clearly demonstrates that as a result of the alleged violation of the provisions of this section (i) a student is currently and unlawfully being excluded from enrollment, attendance, or participation in school or any educational programs or services thereof or (ii) that immediate and irreparable harm will result before the conclusion of such 15-day period absent prompt judicial intervention. The court, upon finding such violation occurred, may grant such relief as it deems appropriate, including actual damages for willful violations, injunctive relief, and temporary restraining orders. The court shall award reasonable attorney fees to a plaintiff who is a prevailing party in any action brought under this subsection. In awarding reasonable attorney fees, the court shall consider the degree to which the relief obtained relates to the relief sought. Any civil action brought under this subsection shall be brought no later than two years after the violation occurred. The court may dismiss any action brought under this subsection upon the court's determination that such action is duplicative, abusive, or presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation.

2. That the Department of Education shall develop and make available to each school board by August 1, 2027, (i) guidance for school personnel, including administrative and front office staff, on the

requirements of the first enactment of this act and (ii) training guidelines and materials for the training of all public elementary and secondary school principals and administrators on compliance with the provisions of the first enactment of this act.

3. That each school board shall (i) by the beginning of the 2027–2028 school year develop, implement, and post in a publicly accessible location on its website policies and procedures in accordance with the first enactment of this act and (ii) require each public elementary and secondary school principal and administrator in the school division to complete training on compliance with the provisions of the first enactment of this act by the beginning of the 2027–2028 school year, consistent with the training materials and guidance developed by the Department of Education pursuant to the second enactment of this act.