

26109735D

**SENATE BILL NO. 491**  
**AMENDMENT IN THE NATURE OF A SUBSTITUTE**  
 (Proposed by the Joint Conference Committee  
 on March 12, 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; civil cause of action.**

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. "Law-enforcement agent" does not include any school resource officer employed by a school board acting in the scope of his normal duties.

"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

SENATE SUBSTITUTE

SB491S3

60 *or immigration or law-enforcement agency, except as provided in subsection D.*

61 *D. Nothing in subdivision C 4 shall be construed to (i) permit the disclosure of student records or*  
62 *information without complying with the requirements of applicable state and federal law relating to the*  
63 *disclosure of such records or information or (ii) prohibit or restrict a school board, school, or other entity*  
64 *from sending to or receiving from the U.S. Department of Homeland Security or any other federal, state, or*  
65 *local governmental agency information relating to the immigration or citizenship status of an individual*  
66 *under 8 U.S.C. §§ 1373 and 1644.*

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

88 **2. That the Department of Education, in collaboration with the Office of the Attorney General, shall**  
89 **develop and make available to each school board by August 1, 2026, guidance and resources on**  
90 **developing policies and procedures to implement the requirements set forth in the first enactment of**  
91 **this act, including guidance and resources on policies and procedures for (i) handling judicial and**  
92 **nonjudicial warrants presented by any law-enforcement agent (agent), as that term is defined in**  
93 **§ 22.1-2.2 of the Code of Virginia, as created by this act, on school property for purposes relating to**  
94 **immigration investigation or detention of an individual currently located on school property, including**  
95 **specific consideration of (a) the readily identifiable characteristics of a judicial warrant and a**  
96 **nonjudicial warrant; (b) protocols to be followed by all employees who may be the first individual to**  
97 **encounter an agent on school property, including when and how to contact legal counsel; (c) protocols**  
98 **to be followed in a scenario in which an agent insists on access regardless of the employee's statements**  
99 **about the warrant presented by the agent; (d) de-escalation techniques to ensure employee safety in**  
100 **any interaction with an agent; and (e) all other factors that may impact the safety of an employee or a**  
101 **child when responding to an immigration investigation or detention of an individual currently located**  
102 **on school property and (ii) training all public elementary and secondary school principals and**  
103 **administrators on compliance with the provisions of the first enactment of this act.**

104 **3. That each school board shall (i) develop and implement by December 31, 2026, policies and**  
105 **procedures in accordance with the first enactment of this act and (ii) require each public elementary**  
106 **and secondary school principal and administrator in the school division to complete training on**  
107 **compliance with the provisions of the first enactment of this act as soon as is practicable but not later**  
108 **than the beginning of the 2027–2028 school year, consistent with the guidance and resources developed**  
109 **and made available by the Department of Education pursuant to the second enactment of this act.**