

SENATE BILL NO. 265

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice

on _____)

(Patron Prior to Substitute—Senator Stanley)

A BILL to amend and reenact §§ 22.1-276.01, 22.1-279.3:1, and 22.1-279.6 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 18.2-56.01, relating to elementary and secondary schools; aggravated bullying unlawful; civil right of action; policies and procedures; penalty.

Be it enacted by the General Assembly of Virginia:

1. That §§ 22.1-276.01, 22.1-279.3:1, and 22.1-279.6 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 18.2-56.01 as follows:

§ 18.2-56.01. Aggravated bullying and cyberbullying unlawful; penalty.

A. For the purposes of this section:

"Aggravated bullying" means more than one act of bullying or cyberbullying that (i) is intentionally directed at another person for the purpose of placing such person in reasonable fear or apprehension of bodily injury or death, provoking a breach of the peace, or inciting an act of violence or (ii) (a) is intentionally directed at such person on the basis of such person's real or perceived race, ethnicity, national origin, religion, age, sex, gender, sexual orientation, disability, medical condition, mental health condition, or appearance and (b) is for the purpose and has the effect of interfering with such person's ability to attend, engage in, or benefit from educational, extracurricular, or other opportunities provided by an elementary or secondary school.

"Bullying" and "cyberbullying" mean the same as those terms are defined in § 22.1-276.01.

B. Any person who commits aggravated bullying against a student enrolled in any elementary or secondary school is guilty of a Class 1 misdemeanor.

C. If an individual engages in an act of bullying or cyberbullying directed at a person after being told by the person at whom such bullying or cyberbullying is directed or by another person at such person's request to cease such behavior because such behavior is (i) placing such person in fear of injury or death or (ii) interfering with such person's presence at or participation in school or school activities, such act shall be prima facie evidence that such individual intentionally or knowingly placed such person in reasonable fear or apprehension of bodily injury or death or had the effect of interfering with such person's ability to attend, engage in, or benefit from educational, extracurricular, or other opportunities provided by an elementary or secondary school.

§ 22.1-276.01. Definitions.

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

"Aggravated bullying" means the same as that term is defined in § 18.2-56.01.

"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 cyberbullying. "Bullying" does not include ordinary teasing, horseplay, argument, or peer conflict.

"Cyberbullying" means bullying that occurs through the use of technology, including through cell phones and other electronic devices or technology capable of accessing the Internet.

"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.

"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.

§ 22.1-279.3:1. Reports of certain acts to school authorities; reports of certain acts by school authorities to parents; reports of certain acts by school authorities to law enforcement.

A. Reports shall be made to the division superintendent and to the principal or his designee on all incidents involving:

1. Alcohol, marijuana, a controlled substance, an imitation controlled substance, or an anabolic steroid on a school bus, on school property, or at a school-sponsored activity, including the theft or attempted theft of student prescription medications;

2. The assault and battery that results in bodily injury of any person on a school bus, on school property, or at a school-sponsored activity;

3. The sexual assault, death, shooting, stabbing, cutting, or wounding of any person, abduction of any person as described in § 18.2-47 or 18.2-48, or stalking of any person as described in § 18.2-60.3, on a school bus, on school property, or at a school-sponsored activity;

4. Any written threats against school personnel while on a school bus, on school property, or at a school-sponsored activity;

5. The illegal carrying of a firearm, as defined in § 22.1-277.07, onto school property;

6. Any illegal conduct involving firebombs, explosive materials or devices, or hoax explosive devices, as defined in § 18.2-85, or explosive or incendiary devices, as defined in § 18.2-433.1, or chemical bombs, as described in § 18.2-87.1, on a school bus, on school property, or at a school-sponsored activity;

7. Any threats or false threats to bomb, as described in § 18.2-83, made against school personnel or involving school property or school buses; ~~or~~

8. The arrest of any student for an incident occurring on a school bus, on school property, or at a school-sponsored activity, including the charge therefor; *or*

9. Any act of aggravated bullying occurring on a school bus, on school property, or at a school-sponsored activity, including any student found guilty thereof pursuant to § 18.2-56.01.

B. Except as may otherwise be required by federal law, regulation, or jurisprudence, each principal:

1. Shall immediately report to the local law-enforcement agency any incident described in subdivision A 1 that may constitute a felony offense;

2. Shall immediately report to the local law-enforcement agency any incident described in subdivisions A

3 through 7, except that a principal is not required to but may report to the local law-enforcement agency any incident described in subdivision A 4 committed by a student who has a disability;

3. May report to the local law-enforcement agency any other incident described in subsection A that is not required to be reported pursuant to subdivision 1 or 2; ~~and~~

4. Shall immediately report any act enumerated in subdivisions A 1 through 5 that may constitute a criminal offense to the parents of any minor student who is the specific object of such act. Further, the principal shall report whether the incident has been reported to local law enforcement pursuant to this subsection and, if the incident has been so reported, that the parents may contact local law enforcement for further information, if they so desire; *and*

5. *Shall immediately report to the local law-enforcement agency any incident described in subdivision A 9.*

C. Notwithstanding the provisions of Article 12 (§ 16.1-299 et seq.) of Chapter 11 of Title 16.1, local law-enforcement authorities shall report, and the principal or his designee and the division superintendent shall receive such reports, on offenses, wherever committed, by students enrolled at the school if the offense would be a felony if committed by an adult or would be a violation of the Drug Control Act (§ 54.1-3400 et seq.) and occurred on a school bus, on school property, or at a school-sponsored activity, or would be an adult misdemeanor involving any incidents described in subsection A, and whether the student is released to the custody of his parent or, if 18 years of age or more, is released on bond. As part of any report concerning an offense that would be an adult misdemeanor involving an incident described in subsection A, local law-enforcement authorities and attorneys for the Commonwealth shall be authorized to disclose information regarding terms of release from detention, court dates, and terms of any disposition orders entered by the court, to the superintendent of such student's school division, upon request by the superintendent, if, in the determination of the law-enforcement authority or attorney for the Commonwealth, such disclosure would not jeopardize the investigation or prosecution of the case. No disclosures shall be made pursuant to this section in violation of the confidentiality provisions of subsection A of § 16.1-300 or the record retention and redisclosure provisions of § 22.1-288.2. Further, any school superintendent who receives notification that a juvenile has committed an act that would be a crime if committed by an adult pursuant to subsection G of § 16.1-260 shall report such information to the principal of the school in which the juvenile is enrolled.

D. The principal or his designee shall submit a report of all incidents required to be reported pursuant to this section to the superintendent of the school division. The division superintendent shall annually report all such incidents to the Department of Education for the purpose of recording the frequency of such incidents on

forms that shall be provided by the Department and shall make such information available to the public.

In submitting reports of such incidents, principals and division superintendents shall accurately indicate any offenses, arrests, or charges as recorded by law-enforcement authorities and required to be reported by such authorities pursuant to subsection C.

A division superintendent who knowingly fails to comply or secure compliance with the reporting requirements of this subsection shall be subject to the sanctions authorized in § 22.1-65. A principal who knowingly fails to comply or secure compliance with the reporting requirements of this section shall be subject to sanctions prescribed by the local school board, which may include, but need not be limited to, demotion or dismissal.

The principal or his designee shall also notify the parent of any student involved in an incident required pursuant to this section to be reported, regardless of whether disciplinary action is taken against such student or the nature of the disciplinary action. Such notice shall relate to only the relevant student's involvement and shall not include information concerning other students.

Whenever any student commits any reportable incident as set forth in this section, such student shall be required to participate in such prevention and intervention activities as deemed appropriate by the superintendent or his designee. Prevention and intervention activities shall be identified in the local school division's drug and violence prevention plans developed pursuant to the federal Improving America's Schools Act of 1994 (Title IV — Safe and Drug-Free Schools and Communities Act).

E. A statement providing a procedure and the purpose for the requirements of this section shall be included in school board policies required by § 22.1-253.13:7.

The Board of Education shall promulgate regulations to implement this section, including, but not limited to, establishing reporting dates and report formats.

F. For the purposes of this section, "parent" or "parents" means any parent, guardian or other person having control or charge of a child.

G. This section 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. Nothing in this section shall require delinquency charges to be filed or prevent schools from dealing with school-based offenses through graduated sanctions or educational programming before a delinquency

152 charge is filed with the juvenile court.

153 **§ 22.1-279.6. Board of Education guidelines and model policies for codes of student conduct; school**
154 **board regulations.**

155 A. The Board shall establish guidelines and develop model policies for codes of student conduct to aid
156 local school boards in the implementation of such policies. The guidelines and model policies shall include (i)
157 criteria for the removal of a student from a class, the use of suspension, expulsion, and exclusion as
158 disciplinary measures, the grounds for suspension, expulsion, and exclusion, and the procedures to be
159 followed in such cases, including proceedings for such suspension, expulsion, and exclusion decisions and all
160 applicable appeals processes; (ii) standards, consistent with state, federal, and case laws, for school board
161 policies on alcohol and drugs, gang-related activity, hazing, vandalism, trespassing, threats, search and
162 seizure, disciplining of students with disabilities, intentional injury of others, self-defense, bullying,
163 cyberbullying, harassment, and intimidation, and dissemination of such policies to students, their parents, and
164 school personnel; (iii) standards for in-service training of school personnel in and examples of the appropriate
165 management of student conduct and student offenses in violation of school board policies; (iv) standards for
166 dress or grooming codes; and (v) standards for reducing bias and harassment in the enforcement of any code
167 of student conduct.

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

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

176 B. School boards shall adopt and revise, as required by § 22.1-253.13:7 and in accordance with the
177 requirements of this section, regulations on codes of student conduct that are consistent with, but may be
178 more stringent than, the guidelines of the Board. School boards shall include in the regulations on codes of
179 student conduct procedures for suspension, expulsion, and exclusion decisions and shall biennially review the
180 model student conduct code to incorporate discipline options and alternatives to preserve a safe,
181 nondisruptive environment for effective teaching and learning.

182 C. Each school board shall include in its code of student conduct prohibitions against hazing and profane

or obscene language or conduct. School boards shall also cite in their codes of student conduct the provisions of § 18.2-56, which defines and prohibits hazing and imposes a Class 1 misdemeanor penalty for violations, that is, confinement in jail for not more than 12 months and a fine of not more than \$2,500, either or both.

D. Each school board shall include in its code of student conduct policies and procedures that include a prohibition against bullying. Such policies and procedures shall (i) be consistent with the standards for school board policies on bullying and cyberbullying developed by the Board pursuant to subsection A; (ii) direct the principal or his designee to notify the parent of any student involved in an alleged incident of bullying within 24 hours of learning of the allegation of bullying; (iii) address instances of cyberbullying that occur outside of school property between students enrolled in the school division; (iv) provide protections designed to ensure that any student who is a victim of or a witness to an instance of cyberbullying is not deterred from reporting or seeking support for such instance of cyberbullying by fears of retaliation, social alienation or rejection, or other negative treatment; ~~and~~ (v) *include a prohibition against aggravated bullying, which shall (a) include detailed procedures for reporting any incident of aggravated bullying; (b) prescribe clear and escalating disciplinary consequences for any such act of aggravated bullying, including, if necessary, expulsion; (c) cite the provisions of § 18.2-56.01 that prohibit aggravated bullying and make any violation of such prohibition a Class 1 misdemeanor penalty; and (d) include information on or resources relating to any civil rights of action or remedies available to victims of an act of aggravated bullying; and (vi) include a list of support services and resources available through each public school to any student who is a victim of cyberbullying relating to reporting and seeking support after experiencing an instance of cyberbullying, including mental health support services, and any information necessary to access any such support services and resources.*

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.

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

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

219 H. Each school board shall include in its code of student conduct a prohibition on possessing any retail
220 tobacco product or hemp product intended for smoking, as those terms are defined in § 18.2-371.2, on a
221 school bus, on school property, or at an on-site or off-site school-sponsored activity.

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