

HOUSE BILL NO. 359
AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Education
on _____)

(Patron Prior to Substitute—Delegate Helmer)

A BILL to amend the Code of Virginia by adding in Chapter 8 of Title 22.1 an article numbered 1.1, consisting of sections numbered 22.1-101.2 through 22.1-101.17, relating to use of public funds for private elementary or secondary school tuition; standards.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Chapter 8 of Title 22.1 an article numbered 1.1, consisting of sections numbered 22.1-101.2 through 22.1-101.17, as follows:

Article 1.1.

Use of Public Funds for Private School Tuition; Standards.

§ 22.1-101.2. Purpose.

The purpose of this article is to ensure that any private elementary or secondary school in the Commonwealth that receives tuition payments, in whole or in part, from public funds adheres to certain accountability, transparency, and civil rights requirements comparable to those imposed on public schools.

§ 22.1-101.3. Definitions.

As used in this article, unless the context requires a different meaning:

"Accountability rating" means the performance designation assigned by the Board pursuant to the state accountability and performance framework in effect at the relevant time.

"Excluded accounts" means contributions to an account established solely for education expenses pursuant to § 529A of the Internal Revenue Code of 1986, as amended.

"Participating private school" means any private elementary or secondary school located in the Commonwealth that enrolls one or more students whose tuition is paid, in whole or in part, by one of the following public tuition assistance vehicles, regardless of whether such school accepts tuition payments directly from a family or indirectly through an intermediary vehicle:

- 1. A state-funded voucher program created by the General Assembly;*
- 2. A federal voucher program, including any federal program that provides direct tuition payments or tuition subsidies for elementary or secondary students to enroll in a private school, to the extent permitted by federal law;*
- 3. A scholarship-granting organization authorized under Virginia law that distributes tuition scholarships*

funded in whole or in part through state or federal tax credits or other tax-favored educational funding mechanisms other than a scholarship foundation approved pursuant to § 58.1-439.27;

4. An education savings account funded or subsidized through state or federal law, including any account or mechanism through which public funds, public subsidies, or public tax advantages are used to pay for private elementary or secondary education expenses, to the extent permitted by federal law;

5. Except in the case of excluded accounts, a tax credit scholarship or any other tax-favored educational funding mechanism; or

6. Any other public tuition assistance vehicle or substantially similar mechanism that uses public funds or public subsidies to facilitate enrollment in a private elementary or secondary school, to the extent permitted by federal law.

"Public assistance student" means any student whose tuition at a participating private school is paid, in whole or in part, by one or more of the tuition assistance vehicles listed in subdivisions 1 through 6 of the definition of "participating private school," regardless of whether such school accepts tuition payments directly from the student's family or indirectly through an intermediary vehicle.

"Public tuition assistance vehicle" does not include any tax credit, scholarship, or assistance provided pursuant to Article 13.3 (§ 58.1-439.25 et seq.) of Chapter 3 of Title 58.1.

"Scholarship-granting organization" means any nonprofit or for-profit entity, fund, or organization that collects, manages, or distributes funds intended to pay or reimburse tuition or mandatory educational fees for enrollment in a private elementary or secondary school for a student who is a resident of the Commonwealth or who attends a private elementary or secondary school located in the Commonwealth, including entities operating under state or federal voucher, scholarship, education savings account, or tax-credit programs, to the extent permitted by federal law. "Scholarship-granting organization" does not include any scholarship foundation that awards scholarships pursuant to Article 13.3 (§ 58.1-439.25 et seq.) of Chapter 3 of Title 58.1.

"Tax-favored educational funding mechanism" means any program, account, credit, deduction, deferral, or other arrangement under federal or state tax law under which contributions, distributions, or expenditures used to pay or reimburse private elementary or secondary school tuition or mandatory educational fees receive preferential tax treatment, whether the tax benefit is claimed by a donor, contributor, parent, student, or other taxpayer, to the extent permitted by federal law. "Tax-favored educational funding mechanism" does not include any tax credit, scholarship, or assistance provided pursuant to Article 13.3 (§ 58.1-439.25 et seq.) of Chapter 3 of Title 58.1.

§ 22.1-101.4. Standards of Learning assessments and accountability.

A. Each participating private school shall require all enrolled students, including each public assistance student and each other student, to participate in the Standards of Learning assessments, or any successor statewide assessments, at the grade levels and in the subjects required of public school students.

B. Participating private schools shall reimburse the Department for the full cost of administering, scoring, and reporting the results of such assessments for their students. The Superintendent shall establish a per-pupil rate based on the average cost of providing such testing and all associated required support to students at participating private schools.

C. Upon request from a participating private school, the Department shall provide an estimate of the cost of Standards of Learning assessment administration for the upcoming academic year.

D. Participating private schools shall report student results on Standards of Learning assessments to the Department in a manner consistent with the reporting required of public schools, including disaggregation by student subgroup (race, ethnicity, disability status, English-learner status, and socioeconomic status). The Department shall publish such results on its public website.

E. If a participating private school (i) receives the lowest possible accountability rating or (ii) in the case that the accountability system includes more than three accountability ratings, receives one of the two lowest accountability ratings, such rating shall trigger the eligibility consequences set forth in § 22.1-101.5.

§ 22.1-101.5. Eligibility and compliance.

A. No participating private school may enroll public assistance students unless it meets the requirements set forth in this article. The enrollment of public assistance students is a privilege, not a right, and is conditioned on continuing compliance.

B. All participating private schools shall receive accountability ratings from the Board, aligned as closely as possible with the current accountability framework for public schools and approved by the Board. Participating private schools shall furnish all data required by the Board to issue an accountability rating. If a participating private school (i) (a) receives the lowest possible accountability rating or (b) in the case that the accountability system includes more than three accountability ratings, receives one of the two lowest accountability ratings or (ii) fails to meet accreditation standards, the school shall be ineligible to enroll any new public assistance students for a period of five years from the date that such rating or accreditation failure is issued. The five-year period shall run regardless of any subsequent improvement in the school's rating, if one is issued, during such period.

C. A public assistance student already enrolled at a school declared ineligible under subsection B may

95 complete the current school year at that school but shall not be permitted to reenroll using any form of public
96 tuition assistance funding.

97 D. At the end of any five-year period described in subsection B, a private school may apply to the Board
98 to resume enrolling public assistance students. The Board shall evaluate the school's compliance with the
99 standards set forth in this article before granting permission to reapply.

100 **§ 22.1-101.6. Nondiscrimination and admissions.**

101 A. Participating private schools shall not discriminate in admissions, enrollment, discipline, retention, or
102 access to educational programs and services on the basis of race, color, religion, national origin, sex, sexual
103 orientation, gender identity or expression, disability, special education status, language proficiency, or
104 socioeconomic status.

105 B. Each participating private school shall publicly state on its website, in enrollment materials, and in
106 any promotional literature, that it admits students without regard to the characteristics listed in subsection A
107 and will affirm the identities of all students while providing appropriate accommodations.

108 C. A participating private school that provides religious instruction or worship shall provide a
109 meaningful and nonpunitive opt-out for any public assistance student whose parent requests such opt-out.
110 The school shall provide a reasonable alternative educational activity during the period of religious
111 instruction or worship and shall not penalize, discipline, or otherwise discriminate against a public
112 assistance student for exercising such opt-out.

113 D. Nothing in this section shall be construed to:

114 1. Prohibit a participating private school from offering religious instruction or worship generally, or from
115 maintaining its religious mission or character;

116 2. Require a participating private school that is a religious organization, or that is operated by a religious
117 organization, to modify employment practices to the extent such practices are permitted under applicable
118 federal or state law; or

119 3. Prohibit a participating private school with a religious mission from maintaining its religious
120 character, governance, or instructional philosophy, or from making employment decisions consistent with
121 federal constitutional protections.

122 **§ 22.1-101.7. Teacher and staff standards.**

123 A. Teachers providing instruction in core academic subjects at a participating private school shall hold a
124 valid Virginia teaching license or an equivalent credential approved by the Board.

125 B. Administrators and counselors at participating private schools shall meet minimum professional

qualifications established by the Board.

C. Participating private schools shall not interfere with or retaliate against employees for exercising rights protected under applicable federal or state labor law.

§ 22.1-101.8. Curriculum, instruction, and special education.

A. Participating private schools shall adopt curricula that align with the Standards of Learning or another set of academic standards approved by the Board as equivalent or superior.

B. Instructional materials used by participating private schools shall be available for inspection by parents of enrolled students. Participating private schools shall provide a process for parents to review instructional materials and request alternative assignments when appropriate.

C. Participating private schools shall not refuse or withdraw admission from a student with a disability who is otherwise qualified for admission. Schools shall develop individualized service plans consistent with the goals of the student's individualized education program (IEP) and provide accommodations and services at no additional charge to the student. The Department or the local school division in which such a student resides shall provide technical assistance upon request.

§ 22.1-101.9. Financial transparency and tuition.

A. Participating private schools shall submit annual audited financial statements to the Department by October 1 and include such statements in the report required pursuant to § 22.1-101.11, including total revenues and expenditures by source, the proportion derived from public assistance programs, tuition and fee schedules, and any management or consulting contracts.

B. No annual tuition increase for any grade level at a participating private school shall exceed the percentage change in the Consumer Price Index for All Urban Consumers (CPI-U) for the most recent certified 12-month period, unless the Board grants a waiver for extraordinary circumstances such as major facility damage or regulatory changes.

C. Participating private schools shall not levy additional fees on public assistance students beyond those charged to other students, except for optional services not required for enrollment.

§ 22.1-101.10. Student rights and due process.

A. Participating private schools shall adopt written discipline procedures providing due process protections equivalent to those for public school students, including notice of charges, an opportunity to respond, an impartial decision maker, and an appeal process.

B. Schools shall maintain a written grievance policy for parents and students, including procedures for complaints of discrimination or failure to provide accommodations.

157 *C. Participating private schools shall adopt anti-bullying and anti-harassment policies consistent with*
158 *state law and report incidents to the Department as prescribed by the Superintendent.*

159 ***§ 22.1-101.11. Reporting and accountability.***

160 *A. Each participating private school shall submit an annual report to the Department by October 1*
161 *detailing enrollment, student demographics, academic results, graduation and dropout data, teacher*
162 *licensure status, disciplinary incidents, and financial information required under § 22.1-101.9.*

163 *B. The Department shall publish each participating private school's report submitted pursuant to*
164 *subsection A, accountability rating, accreditation status, and tuition schedule publicly on its website in an*
165 *accessible format.*

166 ***§ 22.1-101.12. Health, safety, and facilities.***

167 *A. Participating private schools shall comply with all state and local building, fire, and health codes*
168 *applicable to public schools.*

169 *B. All employees and volunteers having direct contact with students shall undergo background checks*
170 *equivalent to those required of public school staff.*

171 *C. Schools shall maintain student immunization and health records consistent with public school*
172 *standards.*

173 ***§ 22.1-101.13. Enforcement and oversight.***

174 *A. The Superintendent may conduct audits, investigations, and site inspections of participating private*
175 *schools to verify compliance with the provisions of this article.*

176 *B. The Superintendent may impose one or more of the following penalties for violations:*

- 177 *1. Suspension of eligibility to enroll new public assistance students;*
178 *2. Revocation of eligibility to enroll public assistance students for up to five years;*
179 *3. Civil penalties not exceeding \$10,000 per violation; or*
180 *4. Restitution of misused public funds.*

181 *C. A participating private school may appeal a penalty imposed pursuant to subsection B to the Board*
182 *within 30 days of notice of such penalty. The Board shall issue a written decision within 120 days of such*
183 *appeal.*

184 ***§ 22.1-101.14. Implementation and grace period.***

185 *A. Any school that qualifies as a participating private school on July 1, 2026, shall have until July 1,*
186 *2027, to come into compliance with the provisions of this article.*

187 *B. Any school that intends to become a participating private school after July 1, 2026, shall fully comply*

188 *with the provisions of this article before enrolling any public assistance student.*

189 *C. The Department shall provide technical assistance, including model policies and reporting templates,*
190 *to participating private schools.*

191 *D. The Board may adopt such regulations and the Board and the Department may adopt such guidance as*
192 *may be necessary for implementation of this article.*

193 **§ 22.1-101.15. Federal law; construction.**

194 *A. Nothing in this article shall be construed to impose requirements that are inconsistent with, or*
195 *preempted by, federal law or federal regulations governing the administration or operation of any federal*
196 *public tuition assistance vehicle.*

197 *B. To the extent any provision of this article is determined to conflict with federal law or federal*
198 *regulations, such conflicting provision shall be inoperative only to the minimum extent necessary, and the*
199 *remaining provisions of this article shall remain in full force and effect.*

200 **§ 22.1-101.16. Severability.**

201 *If any provision of this article or its application to any person or circumstance is held invalid, such*
202 *invalidity shall not affect other provisions or applications of this article that can be given effect without the*
203 *invalid provision or application, and to this end the provisions of this article are severable.*

204 **§ 22.1-101.17. Scope of article.**

205 *The provisions of this article shall not apply to any school for students with disabilities, as that term is*
206 *defined in § 22.1-319, that is licensed by the Department.*