

2017 General Assembly Update: Changes in Virginia School Law



By Roger E. Jones, Ed.D., Editor

September 2017, Richmond, Virginia

INTRODUCTION

School law is constantly evolving and changing. A number of bills were passed by the 2017 General Assembly. Most of this legislation became law on July 1 and will affect public schools. In addition, there is one United States Supreme Court decision referenced at the end. The document is divided into topics which include the following: Administrative Issues; Discipline, Instruction; Personnel; Health Issues; and a United States Supreme Court decision.

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ADMINISTRATIVE ISSUES

School Division of Innovation

Changes to §§ 22.1-212.28 through 22.1-212.32 (HB1981) require the State Board to develop regulations for the designation of School Divisions of Innovation. A "School Division of Innovation" or "SDI" is a school division in which the local school board has developed and for which the Board has approved a plan of innovation to improve student learning; educational performance; and college, career, and citizenship readiness skills in each school in the local school division. "Innovation" means a new or creative alternative to existing instructional or administrative practices or school structures that evidence-based practice suggests will be effective in improving student learning and educational performance. The designation is for a five-year period. The legislation provides a series of goals and performance targets that may be included. (**Editor's Note**: Many school divisions may be interested in applying once the regulations are formulated. Principals are encouraged to review the entire legislation to examine some of the examples of goals and targets included in the legislation.)

School Security Officers

HB1392 **permits** a school board to authorize a controlled number of school security officers to carry firearms in the performance of their duties. The school security officer must have been an active law enforcement officer within the past 10 years and must receive training and certification from the Department of Criminal Justice

Services. The school board would also be required to solicit the input of the chief law enforcement officer of the locality regarding the qualifications of the former officer. (**Editor's Note**: This is enabling legislation not mandatory legislation. If a school has a school resource officer, there is no change resulting from this legislation. If the school division hires its own security officers and if the officers meet identified criteria, the school board may allow them to carry firearms. If this happens, principals will need to communicate the change to parents and students.)

Vision/Hearing Assessments

Section 22.1-273 (HB 1409) was amended to allow school divisions to enter into contracts with a "qualified nonprofit vision health organization" to perform vision screenings. "Qualified nonprofit vision health organization" means a nonprofit organization that is exempt from taxation under § 501(c)(3) or 501(c)(4) of the Internal Revenue Code, has at least 10 years of direct experience in the delivery of vision and vision education services, and does not directly or indirectly derive profit from the sale of vision equipment, insurance, medication, merchandise, or vision-related products. (**Editor's Note**: This is another example of enabling legislation. It simply gives a local school division the option to enter into such a contract.)

HB 1437 amends § 22.1-273 of the Code of Virginia and eliminates the requirement to test the sight and hearing of a student who has any defect of vision or hearing or disease of the eyes or ears that requires the use of a corrective or supplemental device as set forth in the student's Individualized Education Program or 504 Plan when the principal determines that the test would produce no new information. (**Editor's Note**: This gives the principal some flexibility to eliminate a needless assessment when the information is already available.)

Child Custody

HB 1586 amends §§16.1-278.15 and 20-124.2 to legally require parents to assume more responsibility in providing information to the school regarding child custody. When a court order regarding custody that affects school enrollment or picking a child up at school is entered, the parent is required to provide a copy of such an order to the school within three days. (**Editor's Note**: It has been normal practice for a parent or guardian to notify the school of such custody issues, but this legislation makes it clear that it is the parent's or guardian's responsibility to notify the school of such changes.)

Reporting Class Size

An amendment to § 22.1-253.13:2 (HB2174) revises subsection (M) to require school boards to report class size by school in middle and high school. By December 31 (currently January 1), school divisions must report to the public (i) the actual pupil/teacher ratios in elementary school classrooms in the local school division by school for the current school year; and (ii) the actual pupil/teacher ratios in middle school and high school in the local school division by school for the current school year. Actual pupil/teacher ratios shall include only the teachers who teach the grade and class on a full-time basis and shall exclude resource personnel. (**Editor's Note**: This legislation appears to put secondary schools on par with elementary schools to report class size. However, concern was expressed by some education organizations that ratios at the secondary level are not the same as ratios at the elementary level, and that problems could occur as a result of misinterpreting the data.)

DISCIPLINE

Bullying Notification to Parents

Section 22.1-279.6 (HB1709) requires each school board to revise their code of student conduct to direct principals to notify the parent of any student involved in an alleged incident of bullying of the status of any investigation within five school days of the allegation of bullying. (**Editor's Note**: Principals will need to share this policy with parents. Principals must be careful not to disclose protected information such as the names of other students or specific disciplinary action taken regarding another student. This was one of the most debated bills during the 2017 session. It is worth noting that the legislation specifically states that "the principal" notifies the parent. It does not state principal or designee. The question is whether or not the General Assembly intended for the law to be a literal interpretation so only the principal notifies or can another administrator (assistant principal) handling the discipline communicate the information to the parent? Principals may need to seek clarification from their superintendent.)





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Alternatives to Suspension

HB1924/SB829 added a section to the Code that directs the Board of Education to establish guidelines for alternatives to short-term and long-term suspension for consideration by local school boards. The alternatives may include positive behavior incentives, mediation, peer-to-peer counseling, community service, and other intervention alternatives. (**Editor's Note**: It should be noted there were several discipline bills introduced and debated thoroughly. Most would have put limits on the number of maximum days for long-term suspension. It is the editor's opinion that schools and school divisions need to be exploring different discipline strategies. There are two philosophies of discipline – to punish or to change behavior. Suspensions often work if students want what they are missing or if students need to be removed for the safety of others. The editor's experience is that suspensions might work for students who value education and want to be in school. Suspensions are also occasionally necessary for the safety of other students. For some, however, suspension is a reward. School administrators need to have serious discussions with their faculty about the purpose of their discipline program. It is also critical for school personnel to analyze school discipline data.)

INSTRUCTION

Career Technical Education

Previously, school boards had to notify parents on the availability of dual enrollment, AP, IB, and Governor's School programs. An amendment to §22.1-253.13:1 (HB 1552) requires each local school board to implement a plan to notify students and their parents of the availability of career and technical education programs. Boards must also include annual notice on their websites to enrolled high school students and their parents of the opportunity for such students to obtain a nationally recognized career readiness certificate at a local public high school, comprehensive community college, or workforce center. (**Editor's Note**: This legislation continues the General Assembly's interest in promoting and encouraging the importance of career technical programs.)

HB 1708 requires the Board of Education to consider adding the number of industry certification credentials obtained by high school students as part of the student outcome measures included in the Standards of Accreditation. The Board must report its conclusion to the Chairmen of the House Committee on Education and the Senate Committee on Education and Health by November 1, 2017. The Board may not include the number of industry certification credentials in the student outcome measures included in the Standards of Accreditation prior to the 2018 Session of the General Assembly. (**Editor's Note**: This continues the push regarding the importance of career technical programs. Principals are encouraged to become familiar with all proposed changes to the Standards of Accreditation which can be found on the DOE website at: http://www.doe.virginia.gov/boe/accreditation/draft-soa-062317.pdf.)

Section 22.1-298.1 (HB1770/ SB1583) was amended to allow a school board or superintendent to waive certain requirements for licensure in the area of career and technical education. The following cannot be waived: study in child abuse recognition; training in emergency first aid, CPR, use of defibrillators; and industry certification credential. The following can be waived: professional assessments; study in attention deficit disorder; study in gifted education; study in improving communication between schools and families and ways to increase family involvement; proficiency in educational technology for instruction; and instructional methods to promote achievement. (**Editor's Note**: This is enabling legislation. It is not a requirement, but if implemented, it gives school boards and superintendents more flexibility in hiring career technical faculty. If such waivers are provided, principals need to keep in mind that all of the items waived remain an important aspect of being an effective teacher. Principals may need to provide direct instruction on the waived items or provide help in these areas through a mentor.)

Verified Credits

An amendment to § 22.1-253.13:4 (HB1982) adds subsection (D)(16) to provide "for the award of verified units of credit for a satisfactory score, as determined by the Board, on the Preliminary ACT (PreACT) or Preliminary SAT/National Merit Scholarship Qualifying Test (PSAT/NMSQT) examination." (**Editor's Note**: This does provide another option for a verified credit. However, in reality, any student who meets the score determined by the State Board probably has no trouble passing SOL assessments.)

Family Life

An amendment to § 22.1-207.1:1 (HB2257) creates an opportunity for local school boards to modify the family life curriculum. Although the section still mandates a curriculum which incorporates age-appropriate elements of effective and evidence-based programs on the prevention of dating violence, domestic abuse, sexual harassment, and sexual violence, the legislation states that local school boards "may" incorporate age-appropriate elements of effective and evidence-based programs on the law and meaning of consent. (**Editor's Note**: This is yet another example of enabling legislation. Principals need to know if the school board chooses to make such changes and to make sure the changes are communicated to parents.)

An amendment to § 22.1-207.1 (SB1475) makes changes to family life education curriculum guidelines and curricula, including requiring family life education curriculum guidelines to include instruction as appropriate for the age of the student in the benefits, challenges, responsibilities, and value of family relationships for men, women, children, and communities. The legislation permits but does not require instruction that increases student awareness of the fact that consent is required before sexual activity. (**Editor's Note**: This is more enabling legislation since it permits but does not require instruction regarding consent. It appears the General Assembly recognizes the importance of consent but is not yet ready to mandate such instruction.)

Driver Education

Subsection (A)(g) was added to § 22.1-205 (HB2290) requiring that driver's education include instruction concerning traffic stops, including law-enforcement procedures for traffic stops, appropriate actions to be taken by drivers during traffic stops, and appropriate interactions with law-enforcement officers who initiate traffic stops. (**Editor's Note**: This is an effort by the General Assembly to be proactive regarding traffic stops and to promote appropriate behavior by drivers. The emphasis here is to prevent future interactions that lead to violence. Some members of the General Assembly were concerned that students might overreact to being pulled over by police and turn a simple traffic infraction into a major offense.)

Test Availability to Students who receive Home Instruction

An amendment to § 22.1-254.1 (HB2355/ SB1414) requires school boards to make Advanced Placement (AP), Preliminary SAT/National Merit Scholarship Qualifying Test (PSAT/NMSQT), and the PreACT examinations available to students receiving home instruction. School boards must adopt written policies that specify the date by which such students shall register to participate in such examinations. School boards are also required to notify such students and their parents of such registration deadline and the availability of financial assistance to low-income and needy students to take such examinations. (Editor's Note: This legislation puts additional responsibility on school divisions. The legislation makes this a school board responsibility. However, principals need to review policy to determine if they have any additional responsibility. This legislation has caused some post-session discussion. Not all school divisions offer all of these examinations to their enrolled students.)

Economics and Financial Literacy Curriculum

The curriculum of the Economics and Financial Literacy course was impacted through a change to § 22.1-200.03 (SB1245) by adding the following requirement: "evaluating the economic value of postsecondary studies, including the net cost of attendance, potential student loan debt, and potential earnings." The State Board must act by July 1, 2018. (**Editor's Note**: This legislation does not go into effect for a year. It is hard to know whether this will encourage more students to attend college or fewer students to attend.)

PERSONNEL

Requirement for Reading Specialists

An amendment to § 22.1-253.13:2:G (HB2395/ SB1516) states that one reading specialist employed by each local school board that employs a reading specialist shall have "training in the identification of and the appropriate interventions, accommodations, and teaching techniques for students with dyslexia or a related disorder and shall serve as an advisor on dyslexia and related disorders." (**Editor's Note**: There have been advocates for this type legislation for years. Principals need to know the reading specialist in the division who is serving as the advisor. For principals who have not already done so, the editor recommends that the division specialist provide some professional development to teachers. With this legislation and the U.S. Supreme Court decision, Endrew F. v. Douglas County School District (2017), that requires that the education

of a child with a disability be more than the minimum and that it provide "appropriately ambitious" progress, it would seem prudent to provide such training.)

Investigations and License Revocation

Section 22.1-298.1 (HB2432) requires the Board of Education to include in its regulations governing the licensure of teachers and other school personnel procedures for the immediate and thorough investigation by the division superintendent or his designee of any complaint alleging that a license holder has engaged in conduct that may form the basis for the revocation of his or her license. If the investigation establishes reasonable cause to believe that the license holder has engaged in such conduct, the superintendent is required to petition for the revocation of the license. The school board must provide for a hearing within 90 days and must provide a copy of the investigative file to the Superintendent for Public Instruction at the same time as the hearing is provided. The legislation clarifies that when a teacher is or becomes the subject of a founded complaint of child abuse and neglect, such teacher shall be dismissed after all rights to any administrative appeal have been exhausted. Current law does not specify that such appeals are administrative in nature. (Editor's Note: While the legislation clarifies that the appeals process is administrative in nature, it appears to have a more far-reaching impact. In some past instances, there have been situations where employees have been given the opportunity to resign before a thorough investigation is made. Other school divisions have hired these individuals without knowledge of the incident. This legislation appears to reduce the risk that this can happen in the future.)

Teacher Exit Questionnaire

The Code of Virginia (HB2140/ SB1523) was amended to add a section directing the Virginia Department of Education to oversee a pilot program to administer a model exit questionnaire for teachers leaving the school division. The questionnaire is being developed by the State Superintendent. It is to be administered, across five geographically and demographically diverse school divisions, to each teacher who ceases to be employed by the relevant school board for any reason. Results of the data analysis must be included in the State Superintendent's annual report beginning in 2018. (Editor's Note: It appears that the General Assembly wants quantifiable evidence of why teachers leave the profession. Is it due to salary, student discipline, lack of mentoring and support, staying home with children, movement of spouse, lack of professional development, lack of teaching resources, working conditions, lack of respect from parents or the community, testing and data collection including too much emphasis on test scores, lack of involvement in developing school plans, dismissal, or some other reason? The editor hopes the data will also show which teachers leave the profession—those hired with a traditional license or those hired with a provisional license. Hopefully, the data will help policy makers craft a response that enhances the teaching profession and attracts quality individuals to teaching.)

Reciprocity of Teacher License

Section 22.1-298.1 (HB2352) was amended to exempt from any professional teacher's assessment requirements any individual who has obtained a valid out-of-state license, with full credentials and without deficiencies, that is in force at the time the application for a Virginia license is received by the Department of Education. This is subject to the approval of the division superintendent or the school board in the school division in which such individual is employed. (**Editor's Note**: This appears to be one effort to address teacher shortages in Virginia. Any fully endorsed teacher in another state would not have to take additional assessments to be employed in Virginia. It does appear, however, that a local school board or superintendent could require such applicant to take relevant assessments.)

Career Technical Credential

An amendment to § 22.1-253.13:4 (SB1159) provides that the career and technical education credential, when required for high school graduation, adult education, or an alternative education plan, may be satisfied with the successful completion of the Armed Services Vocational Aptitude Battery. (**Editor's Note**: Under current law, the successful completion of an industry certification, a state licensure examination, a national occupational competency assessment, or the Virginia workplace readiness skills assessment satisfies such credential. This legislation simply adds another way to satisfy the requirement.)

HEALTH ISSUES

Child Trafficking

A section was added to the *Code of Virginia* (HB2282) to require the Virginia Board of Education to develop guidelines for training school counselors, school nurses, and other relevant school staff on the prevention of trafficking of children. (**Editor's Note**: According to the National Human Trafficking Hotline, Virginia ranked 15th in the United States during 2016 for the most reported cases of human trafficking. Fifty-nine of those incidents involved minors. Advocates argue that education is the first step to prevention. It should be noted that while the legislation only applies to school counselors and nurses, the intent is to educate all faculty and school personnel. Once trained, counselors and nurses should be expected to provide training for others. This legislation should be considered a "train the trainer" model with those trained training others.)

Counselor Training

Section 22.1-298.1 (SB1117) requires every person seeking initial licensure or renewal of a license with an endorsement as a school counselor to complete training in the recognition of mental health disorders and behavioral distress, including depression, trauma, violence, youth suicide, and substance abuse. (**Editor's Note**: There is a national and statewide movement advocating that educators be more knowledgeable about trauma-informed care and have a greater awareness of trauma and how it impacts a child's development. As advocates in Virginia continue to focus on the "school to prison" pipeline, these conversations both inside and outside the legislative process will continue.)

CPR Training

Section 22.1-298.1 of the Code already requires in subsection (D)(5) that teachers receive training in first aid, CPR, and defibrillators. HB1829 amended that section and now requires *hands-on practice of the skills necessary to perform cardiopulmonary resuscitation*. This requirement is mandated for every person seeking initial licensure or renewal of a license. (**Editor's Note**: Teachers who are up for renewal during the 2017-18 academic year need to be aware of this change. Some may have already accumulated their 180 points, but I interpret this legislation as requiring the "hands on" training for all renewals.)

Administration of Insulin and Glucagon

Amendments to §§ 8.01-225 and 22.1-274.01:1 (SB1116) authorize, but do not require, school board employees who are registered nurses, licensed practical nurses, or certified nurse aides and who have been trained in the administration of insulin and glucagon to assist a student who uses an insulin pump with the insertion or reinsertion of the pump or any of its parts. Such assistance must be authorized by the prescriber and consented to by the student's parent. (**Editor's Note**: While this legislation identifies school personnel who can assist students using an insulin pump, it does not require such personnel to assist. The legislation appears to give the individual employee the right to assist or not assist in such an activity. It is also important to note that any agreed to assistance must be authorized by the prescriber with the consent of the parent. To decrease liability concerns, there should be a defined protocol followed in each school to ensure that all three prongs of this are addressed: prescriber authorization; parental consent; and employee agreement.)

Testing Potable Water

A section was added to 22.1-135.1 (SB1359) which requires each local school board to develop and implement a plan to test potable (drinking or used for cooking) water from sources identified by the U.S. Environmental Protection Agency as high priority, giving priority in such testing plan to schools whose school building was constructed, in whole or in part, before 1986. (**Editor's Note**: It would appear to be important to let students, parents and the community know about this legislation. Otherwise, when they hear about the testing, they will jump to their own conclusions about why it is being done. It is wise to be proactive—nothing is wrong, just focusing on safety. It appears that the legislation is mandated in an effort to prevent a situation similar to the water issues in Flint, Michigan.)

UNITED STATES SUPREME COURT DECISION

Editor's Note: While not connected to General Assembly legislation, the 2017 U. S. Supreme Court decision in Endrew F. v. Douglas County School District has potentially far-reaching and long-term implications for public schools. While the Individuals with Disabilities Act (IDEA) has required a "free appropriate public education" (FAPE) for students with disabilities, the unanimous 8-0 vote of the Supreme Court pushes the quality of that education to a higher level. The previous expectation of "de minimis" progress is no longer the standard. The new decision states that such students should make meaningful "appropriately ambitious" progress.

Developing appropriate Individualized Education Plans (IEP's) will take on an even more meaningful role for each child. In addition, the editor recommends that serious consideration be given to how the IEP connects to the state required Academic and Career Plan which must be developed, reviewed, and modified as necessary for every secondary student.

Regardless of the quality of IEP's previously developed, this ruling is likely, at least in some school divisions, to increase pressure from advocacy groups and parents to provide greater access to resources. It is very important that the administrator who supervises special education be well trained in developing IEP's.

MISSION STATEMENT

The mission of the Virginia Association of Secondary School Principals, Inc. is to support school principals and assistant principals in providing leadership to their schools and communities for the purpose of improving the education of Virginia's youth.

VISION STATEMENT

The vision of the Virginia Association of Secondary School Principals, Inc. is to be the Commonwealth's foremost authority on school leadership for Virginia's youth.

ABOUT THE EDITOR

Roger E. Jones is professor and dean of the School of Education, Leadership Studies, and Counseling at Lynchburg College. Since 2003, Dr. Jones has served as director of the VASSP/VFEL Center for Educational Leadership which is housed at Lynchburg College. He is a former middle and high school principal, assistant superintendent and has served as VASSP president. Dr. Jones, T. Page Johnson, and Dr. Randy D. Barrack are authors of *The Legal Handbook for Virginia School Administrators*, 3rd Edition, Omni Publishers, Inc., Bulverde, Texas.

FOR MORE INFORMATION

For more information about the impact of laws passed by the Virginia General Assembly, policies and regulations passed by the Virginia Board of Education, and laws passed by Congress, log on to VASSP's website at www.vassp.org. Postings are made regularly on the website by VASSP Director of Government Relations Elizabeth "Bet" Neale (bneale@vassp.org). Ms. Neale and VASSP Executive Director Dr. Randy Barrack (rbarrack@vassp.org) are registered lobbyists at the General Assembly.

For case law and education policy affecting the principal's role in public school education read VASSP's bimonthly publication, *EDUCATION LAW NOTES: Federal and Virginia Developments in School Law*, written by Bradford A. King, Attorney at Law, Sands Anderson. Mr. King has practiced education law for more than 20 years serving public schools throughout the Commonwealth of Virginia. He is a Shareholder at Sands Anderson, a member of their Government Group, and leader of the School and Education Law team.

To learn about VASSP's foundation – the Virginia Foundation for Educational Leadership – visit www.edleader. Founded in 1995 by secondary school principals, the foundation links all education levels – preschool, elementary, middle, high school, and higher education – through a seamless system of leadership learning. The nonprofit organization addresses current research and best practices in leadership, examines and assimilates strategies that further school improvement, and seeks to improve articulation among school leaders from preschool through higher education.

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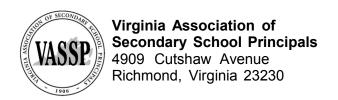
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