

**REPORT OF THE
VIRGINIA COMMISSION ON YOUTH**

Student Discipline Statutes

**TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA**



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I. Authority for Study

Section 9-292 of the *Code of Virginia* establishes the Commission on Youth and directs it to "...study and provide recommendations addressing the needs of and services to the Commonwealth's youth and their families." Section 9-294 provides the Commission the power to "...undertake studies and gather information and data in order to accomplish its purpose...and to formulate and present its recommendations to the Governor and members of the General Assembly."

The 2000 General Assembly conveyed House Joint Resolution 186 to the Commission by way of letter from the Speaker of the House of Delegates. House Joint Resolution 186 established a joint subcommittee to study student disciplinary statutes and required a report to the 2002 Session of the General Assembly. The letter directing the Commission to undertake the study also directed the Commission to report its findings to the 2001 Session of the General Assembly.

Upon receipt of the letter, the Commission refined the study and identified three areas for analysis: (i) clarification and streamlining of student disciplinary statutes, (ii) standard definitions for "expulsion," "suspension" and "exclusion," and (iii) identification of methods, including the use of technology, which may provide educational services to students who have been expelled.

In fulfilling its legislative mandate, the Commission undertook the study.

I. Members Appointed to Serve

The authorizing legislation required the Commission on Youth to study student disciplinary statutes. The Commission received briefings and presentations during the spring and fall of 2000. Members of the Commission on Youth are:

The Hon. Phillip Hamilton, Chair, Newport News
Mr. Gary Close, Vice Chair, Culpeper
The Hon. L. Karen Darner, Arlington
The Hon. Jerrauld C. Jones, Norfolk
The Hon. Robert F. McDonnell, Virginia Beach
The Hon. Yvonne B. Miller, Norfolk
The Hon. R. Edward Houck, Spotsylvania
The Hon. John S. Reid, Chesterfield
The Hon. D. Nick Rerras, Norfolk
The Hon. Robert Tata, Virginia Beach
Mr. Steve Cannizzaro, Norfolk
Mr. Douglas Jones, Alexandria

III. Executive Summary

The Commission on Youth undertook the study of student disciplinary statutes to examine ways to clarify the statutes and provide more consistency while ensuring due process and maintaining the discretion of local school boards. In addition to the introduction of House Joint Resolution 186 during the 2000 General Assembly Session, House Bill 1179 was introduced in which numerous changes to the disciplinary statutes were presented. Both House Joint Resolution 186 and House Bill 1179 were contemplated during this study.

Upon receipt of the Speaker's letter, the Commission on Youth redefined and narrowed the scope of the study. While the scope was not limited to "technical" changes, extensive changes to disciplinary policies were not anticipated. However, substantive issues were revealed while developing definitions for commonly used terms or addressing inconsistencies in disciplinary procedures among school divisions. Thus, the recommendations reflect both organizational changes designed to clarify disciplinary statutes, as well as some changes in disciplinary policies.

In conducting the study, Commission staff researched and analyzed applicable Federal and Virginia laws, examined local student conduct codes, convened four meetings of a twenty-one member advisory group, and sought input from division superintendents.

Based upon an analysis of existing law, local student conduct codes, and the input and expertise of the advisory group, the following recommendations are offered:

A. DEFINITIONS

Commonly used disciplinary terms are not defined in the *Code of Virginia*. Instead, custom and practice have dictated the use of the terms creating inconsistencies in local practice.

RECOMMENDATION 1:

Amend the *Code of Virginia* to include the following definitions:

- ***Short-term suspension* means any disciplinary action wherein a student is not permitted to attend school for 10 school days or less.**
- ***Long-term suspension* means any disciplinary action wherein a student is not permitted to attend school for more than 10 school days but less than 365 calendar days. Pursuant to local school board policy, a student who has been long-term suspended may be permitted or required to attend an alternative education placement or program provided by the local school division.**

- ***Expulsion*** means any disciplinary action wherein a student is not permitted, by a school board or committee of the school board, to attend school within a school division and is ineligible to apply for readmission for 365 calendar days after the date of the expulsion. At the discretion of the local school board, an expelled student may be permitted or required to attend an alternative education program provided by the local school. Petitions for readmission may be submitted, 365 calendar days after the date of the expulsion, in accordance with the procedures set forth in section ----- (*to be named later*) and any procedures established by the local school board.
- ***Exclusion*** means the denial of admission by a school board in Virginia of a student who has been expelled or long-term suspended for more than 30 calendar days by another school board or a private school in this Commonwealth or in another state or for whom admission has been withdrawn by a private school in this Commonwealth or in another state. At the discretion of the local school board, an excluded student may be permitted or required to attend an alternative education program provided by the local school.
- An ***alternative education program*** includes, but is not limited to, night school, adult education, or any other educational program designed to offer instruction to students for whom the regular program of instruction may be inappropriate.

B. FACTORS FOR CONSIDERATION IN EXPULSIONS

It is within the discretion of each school division to determine for which offenses and under what circumstances a student will be expelled for a violation of local school board policy. As a result, there may be inconsistencies in the issuance of expulsions among school divisions in Virginia.

RECOMMENDATION 2:

The *Code* should be amended to include a list of factors to be considered by the division superintendent prior to a decision to expel a student. Language similar to the following is recommended:

Before making a recommendation for expulsion for violations other than those specified under *Virginia Code* section 22.1-277.01 (Gun Free Schools Act) and section 22.1-277.01:1 (Drug Free Schools Act), a superintendent shall consider, but not be limited to, the following factors:

1. Nature and seriousness of the violation
2. Degree of danger represented to the school community

3. Disciplinary history, including the seriousness and number of prior violations
4. The appropriateness and availability of an alternative education placement or program
5. Age of the student
6. Grade level
7. Results of mental health, substance abuse or special education assessments
8. Record of previous intervention attempts
9. Attendance record
10. Academic record
11. Other factors as appropriate

No decision to suspend or expel a student shall be reversed on the grounds that the superintendent failed to consider any of the factors specified in this section.

Nothing in this section shall be deemed to preclude a school board from considering these factors as special circumstances authorized in *Virginia Code* section 22.1-277.01 (Gun Free Schools Act) and section 22.1-277.01:1 (Drug Free Schools Act).

C. SCHOOL BOARD AFFIRMATION OF EXPULSION

Unless a student, who has been recommended for expulsion, takes advantage of the hearing before the school board or its committee, formal action by the school board to expel the student may not occur and technically the child would not be expelled.

RECOMMENDATION 3:

- Amend the *Code* to specify that a school board (or school board committee, if provided by regulations) must affirm each expulsion, regardless of whether the student has exercised his/her right to appeal. It is recommended that this be placed in the section dealing with expulsion procedures.

D. READMISSION AFTER EXPULSION

School boards that are required to admit expelled students express concern that they must admit students whom the expelling school boards will not re-admit and may even view as a danger. This inequity in admission requirements is viewed as a significant issue.

RECOMMENDATION 4:

- Amend the *Code of Virginia* to allow a school board to exclude a student, regardless of the offense for which they were expelled or suspended, but continue to require that the school board find that the student poses a danger to students or staff.

RECOMMENDATION 5:

- Amend the *Code of Virginia* to eliminate the one-year maximum on exclusion when the student was expelled or admission was withdrawn. The limit on the length of an exclusion of a suspended student would not change and would continue to be limited to the length of the suspension.

Upon expulsion, an expelling school board may set terms and conditions for the re-admission of the expelled student. Under existing law, if that student applies for admission in another school division and the school board chooses to exclude, at the end of the exclusion, the student must be admitted, thereby allowing the student to avoid meeting any of the terms and conditions set by the expelling school board.

RECOMMENDATION 6:

- Amend the *Code of Virginia* so that local school boards may accept or waive any or all of the conditions for readmission imposed by the expelling school board.

E. NOTIFICATION OF ADJUDICATION OR CONVICTION

Several issues related to *Virginia Code* section 16.1-305.1 (disclosure of disposition in certain delinquency cases) were raised. In consideration of the limited nature of this study, an extensive and substantive review of these issues was beyond the purview of this study. Likewise, because coverage of such topics was not anticipated, representatives from the judicial branch, necessary for a thorough review, were not included.

RECOMMENDATION 7:

- The Superintendents–Judges Liaison Committee should address issues of concern regarding the communication of information contained in reports to superintendents made pursuant to *Virginia Code* section 16.1-305.1. Specific issues include the need for school boards to be informed of the adjudication or convictions of students in their division, confidentiality of these reports, oversight of the superintendent in making or failing to make disciplinary recommendations in these

matters, and the consistency of the disciplinary recommendations made in these cases.

On occasion, a student is adjudicated or convicted of a crime that is reportable to the superintendent pursuant to *Virginia Code* section 16.1-305.1, but prior to the submission of the report to the superintendent, the student moves from the division and applies for admission in another school division. The concern is that the original jurisdiction does not know to where the child moved and no action related to the report is taken. Also, the receiving school division is unaware of the criminal offenses since the report is not a part of the scholastic record.

RECOMMENDATION 8:

- **The Superintendents–Judges Liaison Committee should address this gap to determine if any changes to procedures or the law are necessary, while balancing the student’s right to confidentiality and the school board’s desire to ensure a safe school environment.**

F. PERMISSION OR REQUIREMENT TO ATTEND AN ALTERNATIVE EDUCATION PROGRAM

There may be situations in which it is appropriate to allow a student who has been expelled to attend an alternative education program, rather than prohibit school attendance within the division. Similarly, for students who have been long-term suspended, requiring attendance at an alternative education program may prevent students from engaging in potentially harmful behaviors and reduce the likelihood that the student will be retained in their current grade.

RECOMMENDATION 9:

- **The *Code of Virginia* should be amended to provide the following authority to local school boards: A student who has been long-term suspended or expelled may be permitted or required to attend an alternative education program provided by the school division. Also, such a statement should be included in the definitions of long-term suspension, expulsion, exclusion, and in the section that sets forth the procedures for readmission of suspended and expelled students (currently *Virginia Code* section 22.1-277.03).**

G. PROPERTY VIOLATION

Virginia Code section 22.1-276 states that pupils shall be required to reimburse the school board for any actual breakage or destruction of property owned by or under the control of the school board. This section does not specify that pupils are responsible for the value of items they fail to return.

RECOMMENDATION 10:

- Amend *Virginia Code* section 22.1-276 by adding “failure to return property owned by or under the control of the school board” to the list of actions for which a student is required to reimburse the school board.

H. EDUCATION AND TRAINING

A number of concerns identified in this study resulted from a lack of understanding of existing law or inconsistent application of existing procedures. Amending the *Code* was not seen as a necessary or desired approach to these concerns.

RECOMMENDATION 11:

- The Virginia Department of Education, the Virginia School Board Association, the Virginia Association of School Superintendents, the Virginia Association of Elementary School Principals, and the Virginia Association of Secondary School Principals should provide opportunities for education and training to school divisions or their constituents, as appropriate, on the student discipline provisions of the *Virginia Code* and the use of the discretion afforded to local divisions.

I. STATUTORY CONSTRUCTION

Title 22.1, Chapter 14, Article Three of the *Code of Virginia* which deals with Discipline has been amended numerous times over the years. While these amendments have produced the desired substantive results, they have also contributed to a piecemeal construction that is difficult to use and understand, especially for parents, school administrators and school board members who may or may not have legal training.

RECOMMENDATION 12:

- Title 22.1, Chapter 14, Article Three of the *Code of Virginia* should be reorganized to improve the usability of this section.

School administrators, school board members and parents find it cumbersome to read the sections of the *Code* pertaining to discipline when there are frequent cross-references to other *Virginia Code* sections not located in Title 22.1. While it is understood that there is no substitute for the thorough reading of all referenced *Code* sections, it is felt that inclusion of descriptive phrases would act as a reminder of the content of those referenced sections and would reduce the need to access those sections.

RECOMMENDATION 13:

- It is recommended that the titles of the referenced *Virginia Code* sections be added as descriptive phrases in the following *Code* sections:
 - In section 22.1-277.01 descriptive phrases should be added for sections 18.2-308.1 and 18.2-308.
 - In section 22.1-277.01:1 descriptive phrases should be added for section 18.2-247.
 - In section 22.1-277.02 descriptive phrases should be added for section 16.1-305.1.
 - In section 22.1-277.1 descriptive phrases should be added for section 16.1-305.1.

J. ALTERNATIVE EDUCATION

Alternative education is an important component in the education of students who have been disciplined. Three aspects of alternative education received attention.

FUNDING FOR ALTERNATIVE EDUCATION PROGRAMS

Based upon the findings of a 1999 study by the Commission on Youth and the Virginia Department of Education (House Joint Resolution 242), a \$17 million budget amendment to support alternative education statewide was presented to the 2000 Session of the General Assembly. Only a small portion, \$400,000, of the approximately \$17 million requested was appropriated in the first year for a grant program providing alternative education in the elementary schools. The need for additional support of alternative education remains and the findings made in the 1999 House Joint Resolution 242 study continue to be appropriate.

RECOMMENDATION 14:

- The Commission on Youth should submit a budget amendment based upon the findings made in the 1999 House Joint Resolution 242 study which would enable existing alternative education programs to address unmet needs.

PREPARATION OF ALTERNATIVE EDUCATION TEACHERS:

Teachers in alternative education settings benefit from pre-service or in-service training that focuses on skills needed to manage and instruct at-risk youth and exceed those necessary to teach a particular subject matter.

RECOMMENDATION 15:

- The Virginia Department of Education should support and explore the development of undergraduate and graduate-level programs, not for certification or licensure, but similar to those at George Mason University, which offer professional education courses with an emphasis in alternative education.

RECOMMENDATION 16:

- The Virginia Department of Education should support and encourage the availability of in-service training courses, which address the specific needs and concerns of alternative education teachers.

USE OF TECHNOLOGY FOR INSTRUCTION IN ALTERNATIVE EDUCATION PROGRAMS:

Two issues drive the following recommendation. The first is the need for an alternative method of instruction for students, who due to security and safety concerns, are felt to be inappropriate for a classroom setting. The second is the need to provide instruction in the most cost-effective manner to students who have been long-term suspended or expelled.

RECOMMENDATION 17:

- The Virginia Department of Education should explore the development of a statewide curriculum using interactive educational software, which meets Standards of Learning requirements.

IV. Study Goals and Objectives

Under the direction of the Commission, the following study goals were developed by the staff and approved by the Commission in May of 2000:

- I. Clarify and streamline student disciplinary statutes;
- II. Provide standard definition of the terms "expulsion," "suspension" and "exclusion," while maintaining local school board discretion; and
- III. Identify methods, including the use of technology, which will provide educational services to students who have been expelled.

To fulfill the study mandate, the Commission undertook the following activities:

1. Reviewed Federal Statutes, including the Individuals with Disabilities Education Act (IDEA), the Gun Free Schools Act, the Safe and Drug-Free School Act, and the Family Educational Rights and Privacy Act of 1974 (FERPA).
2. Reviewed Federal and State court decisions.

3. Analyzed Virginia practices:
 - Reviewed *Virginia Code*.
 - Analyzed HB 1179 (carried over in 2000 Session).
 - Reviewed local school boards' suspension, exclusion, expulsion and appeals policies.
4. Convened and facilitated an Advisory Group to define issues and develop recommendations.
5. Identified a cross sample of local school boards and examined local discipline policies.
6. Synthesized findings of statutory review and workgroup recommendations.
7. Solicited feedback to recommendations from constituents and superintendents.

V. Methodology

The findings of the 2000 Commission on Youth study of Virginia's student disciplinary statutes are based on several distinct research and analysis activities. Each activity is described briefly below.

A. LEGAL RESEARCH AND ANALYSIS

A review of federal and Virginia education statutes was conducted. While authority for the regulation of education is generally reserved for the states and local governing bodies, federal law does govern certain areas. The Gun-Free Schools Act of 1994¹, the Safe and Drug Free Schools and Communities Act of 1994², and the Family Educational Rights and Privacy Act of 1974 (FERPA)³ were reviewed for their impact on student discipline in Virginia.

It should be noted that a determination was made by the Commission on Youth to exclude from this study, issues related to disciplinary actions against children with disabilities. Disciplinary actions against students with disabilities are governed by the Federal Individuals with Disabilities Education Act (IDEA), which ensures a "free and appropriate public education" to children with disabilities. The IDEA and accompanying regulations are comprehensive and are controlling over state law.

Those sections of the *Code of Virginia* specifically addressing Pupil Discipline⁴ as well as sections relevant to it also were reviewed. A selective review of other states' statutes was completed. These cross-state comparisons were of limited value since items such as definitions are a part of each state's educational system with local divisions tailoring the law to meet their own needs. Flow charts demonstrating disciplinary procedures set forth in *Virginia Code* section 22.1-277 were developed to

¹ 20 USCS § 8921 (Law. Co-op.1997)

² 20 USCS § 7101 (Law. Co-op.1997)

³ 20 USCA § 1232g (Law. Co-op.1998 & Supp. April 2000)

⁴ Va. Code Ann. §§22.1-276 to -280.3 (Michie 2000)

facilitate discussion and reduce confusion. Federal and state case law also was examined for the courts' interpretation and application of the statutes.

B. ADVISORY GROUP MEETINGS

As directed in House Joint Resolution 186, the Commission conferred with the Secretary of Education, Board of Education, Superintendent of Public Instruction, Virginia Parents and Teachers Association, Virginia School Boards Association, Virginia Education Association, Virginia Association of School Superintendents, Virginia Association of Elementary School Principals, Virginia Association of Secondary School Principals, Virginia Counselors Association, Virginia Association of Chiefs of Police, and the Virginia Sheriff's Association. Each of these agencies or organizations was represented on the Advisory Group convened to provide input to the study. In addition to the persons specified in the resolution, representatives from the Virginia Department of Juvenile Justice and the Office of the Attorney General, private attorneys, division superintendents and a representative from the Virginia Council of Private Education were included on the 21-member Advisory Group. A listing of Advisory Group members is provided in Appendix B.

The Advisory Group held four meetings between August and October of 2000, in which they identified, refined and prioritized the issues of the study and made recommendations for change.

C. REVIEW AND ANALYSIS OF LOCAL STUDENT CONDUCT CODES

Since decisions regarding education are left largely to local school boards, a study of student discipline necessitated the review of local student conduct codes. Student conduct codes were gathered from each local school division in Virginia. These local codes were reviewed for variations in definitions of frequently used disciplinary terms such as "suspension" and "expulsion," and the definitions of student offenses and punishments. A detailed analysis of a random sampling of the student conduct codes was conducted to ascertain how disciplinary recommendations for expulsion are determined.

VI. Background

Education traditionally has been viewed as within the purview of state and local governments, with local school divisions maintaining significant discretion. As in other states, federal and state statutory and case law and local school board policies provide the legal framework for education in Virginia.

Although limited in their impact over state and local education laws and regulations, there are three federal, statutory acts that are important in the analysis of student discipline. These acts are the Gun-Free Schools Act of 1994,⁵ the Safe and

⁵ 20 USCS §§8921

Drug Free Schools and Communities Act of 1994,⁶ and the Family Educational Rights and Privacy Act of 1974 (FERPA).⁷ In addition to federal, statutory law, the United States Supreme Court has reviewed student disciplinary decisions and articulated a rule of substantial deference to decision-making by local school officials.⁸ In a 1998 law review article, the authors, upon the review of fifty-four lower court decisions involving student discipline since the U.S. Supreme Court's decision in *Vernonia School District 47J v. Wayne Acton* 515 U.S. 646 (1995), found that in three-quarters of the cases reviewed, the courts either found in favor of the school district or granted greater discretion to the school officials.⁹ With the control of education reserved to the state and local governments, the federal review of state and local actions is limited to violations of specific constitutional guarantees.¹⁰

While it must at least conform to federal law, Virginia law can also set forth requirements for student discipline that are more restrictive than those required under federal law. The *Code of Virginia* provides in Article 3, Chapter 14 of Title 22.1 Virginia's minimum requirements for disciplining students. Virginia also requires the Board of Education to establish guidelines and develop model student conduct policies.¹¹ Local school boards then are required to adopt regulations governing student conduct, including the proceedings for suspension, expulsion, and exclusion decisions.¹² At a minimum, local conduct policies are to be consistent with the guidelines established by the Board. Local school boards may, and frequently do, set forth procedures more restrictive than those required by the *Code* or Board of Education Guidelines.

Despite the direction given by statewide statutes and guidelines, there are many variations in the local codes. The characteristics of each local division impact these variations because of communities' differing philosophies regarding student discipline.

The inconsistencies found among local divisions can be problematic. The desire for consistency in disciplinary policies among local divisions can create tension with the concept of local control of education. Generally, inconsistency is related to the manner in which disciplinary actions are determined to be appropriate and the processes for taking disciplinary action. Such inconsistency can lead to concerns about inequities in disciplinary action both between students in one division and among students in other divisions. Students and their parents who move to a new division find it difficult when terminology is defined differently and the severity of the offense is greater in one division than another. The data collected from local divisions also is less meaningful without consistent definitions.

⁶ 20 USCS §7101

⁷ 20 USCA §1232g

⁸ Including but not limited to: *Goss v. Lopez*, 419 U.S. 565 (1975); *Wood v. Strickland*, 420 U.S. 308 (1975); *New Jersey v. T.L.O.*, 469 U.S. 325 (1985); *Ingraham v. Wright*, 430 U.S. 651 (1977); *Board of Ed. of Rogers, Ark. v. McCluskey*, 458 U.S. 966 (1982); *Vernonia School District 47J v. Acton*, 515 U.S. 646 (1995).

⁹ David M. Pedersen, *A Homemade Switchblad Knife and a Bent Fork: Judicial Place Setting and Student Discipline*, 31 Creighton L. Rev. 1053 (1998).

¹⁰ *Wood* 420 U.S. at 326.

¹¹ § 22.1-278

¹² *Id.*

The challenge in addressing concerns of inconsistency is balancing it with discretion at the local level. The inherent nature of local discretion does not lend itself to statewide consistency. The need to balance these issues is apparent after undertaking this study.

A. DEFINITIONS OF TERMS

The Commission, in refining the study, directed that a standard definition of terms be established for “expulsion,” “suspension” and “exclusion.” Defining commonly used disciplinary terms provided a foundation for further consideration of student discipline and addressing inconsistencies therein. All three terms are used in the *Code* as related to student discipline but are not defined. The acts of suspension and expulsion are explained through the minimum procedures for these acts set forth in *Virginia Code* section 22.1-277. Similarly, the term exclusion is explained in *Virginia Code* section 22.1-277.2 through the procedure by which a local school board may exclude a student.

Prior to crafting definitions, several resources were examined for their content. The June 1994 Student Conduct Policy Guidelines developed by the Virginia Department of Education provide a definition for suspension and expulsion. In the Guidelines, suspension is defined as “the temporary denial of a student’s attendance at school,” and expulsion is defined as “the permanent denial of a student’s attendance at school.”¹³ A review of local codes of student conduct also was completed to find commonalities in the local definitions and provide guidance in the development of new definitions. Definitions for expulsion, long-term suspension, short-term suspension, and alternative education program, proposed in House Bill 1179 during the 2000 Session of the General Assembly, were reviewed and considered in the development of the definitions recommended by the Commission on Youth. Finally, sample policies pertaining to student discipline produced by the Virginia School Boards Association were reviewed.

Upon review of the local student conduct policies, it was determined that several models are employed by local school boards to give meaning to the terms suspension and expulsion. The first is what could best be described as a basic definition, in which the meaning of the word immediately follows the term. The second is where no basic definition is given and instead the word’s meaning is implied from its use. The third method is the explanation of the term through the outlining of the process, similar to that found in the *Code of Virginia*. For the term “exclusion”, some local policies omitted the term, while others defined it in terms of the general re-admission policy for expelled students. It also was found that one local policy used exclusion as a broad category, which includes long-term suspension and expulsion.¹⁴

¹³ Student Conduct Policy Guidelines, Commonwealth of Virginia, Department of Education (June 1994)

¹⁴ Hampton City Public Schools, Elementary Student Rights and Responsibilities Handbook, Code of Conduct with Parent Section for PreK-5th Grade at 10-13 (1999-2000).

B. CLARIFICATION AND STREAMLINING OF STUDENT DISCIPLINARY STATUTES:

The Commission directed that the study address ways to clarify and streamline student disciplinary statutes. The need for such clarification arose from concerns that existing disciplinary procedures are cumbersome for school officials, confusing for students and parents, and may exceed minimum due process requirements.

The first task in addressing these concerns was to assess whether Virginia's statutory requirements for student discipline exceed the minimum due process requirements set forth in *Goss v. Lopez*. The United States Supreme Court in *Goss* held that students who have been temporarily suspended from a public school have property and liberty interests in their education that qualify for protection under the Due Process Clause of the Fourteenth Amendment of the United States Constitution. In connection with a suspension of 10 days or less,¹⁵ due process requires that the student be given oral or written notice of the charges against him. If the student denies them, due process requires an explanation of the evidence the authorities have and an opportunity to present his or her version of the story.¹⁶

Code of Virginia section 22.1-277 provides the minimum procedures that local school boards must follow when suspending or expelling a student.¹⁷ For a suspension of not more than ten school days, the principal, assistant principal or teacher must take the following steps:

- Provide the pupil with oral or written notice of the charges against him,
- If the pupil denies the charges, provide an explanation of the facts as known to school personnel, and
- Provide an opportunity to present the pupil's version of what occurred.

Similarly, *Virginia Code* section 22.1-277 provides the minimum procedures for a suspension from school attendance for more than ten school days. These procedures include the following:

- Written notice to the pupil and parent of the proposed action and the reasons therefore,
- Right to a hearing before the school board (or school board committee or superintendent, if provided for by local regulations), and
- Right to appeal decision by superintendent to school board, or if the hearing was before a committee of the school board, non-unanimous decisions may be appealed to the school board.

¹⁵ *Goss*, 419 U.S. at 581. The due process requirements for a suspension greater than 10 days may require procedures more formal than those required under *Goss*.

¹⁶ *Id.*

¹⁷ See Appendix C for flow charts that depict the process for long-term suspension and expulsion.

The minimum procedures for expulsions are set forth in *Virginia Code* section 22.1-277 and include the following:

- Written notice to the pupil and parent of the proposed action and the reasons therefore,
- Right to a hearing before the school board or a committee thereof, and
- Right to appeal to the full school board if the committee's decision is not unanimous

Clearly the procedures outlined for all three disciplinary actions meet but do not exceed the due process requirements required under *Goss*. However, local school boards may exceed the minimum procedures prescribed in the *Code of Virginia*. Some local school boards have chosen to add procedures, which exceed those minimally required.¹⁸ Local discretion allows local school boards to tailor the disciplinary procedures to meet the needs of their district. Therefore, additional concerns about the complexity of disciplinary procedures will need to be addressed at the local level.

The Advisory Group also examined the disciplinary sections within the *Code of Virginia* seeking ways to improve the organization of the content, streamline the language and procedures, and generally reduce confusion. Over time, numerous amendments to these sections have been made. A "piecemeal" construction has resulted, with students' rights and school board obligations scattered throughout. The resulting complexity impacts not only school officials and administrators who use this information regularly, but also parents and students who are faced with a disciplinary action. The latter is of considerable concern because when faced with a disciplinary action, it is important for parents and students to be well informed and understand their rights and responsibilities as well as those of the school board. To this end, the Virginia General Assembly enacted *Virginia Code* section 22.1-279.3 (C), which requires each school board to send to parents of each enrolled student, within one calendar month of the opening of school, a copy of the school board's standards of student conduct. Again, variations exist among the standards. While some local standards are thorough, others provide only minimal information.

Also identified as problematic are the multiple cross-references to other *Code* sections within the disciplinary *Code* sections. Additional information that provides a general idea of the content of the referenced section is needed. Cross-referencing of other *Code* sections is a common and practical means of statutory construction. It allows for the inclusion of information in the referenced section without stating at length the text of that section. However, this issue goes directly to the usability of these sections, especially for school boards and administrators, who routinely refer to these sections. The Advisory Group suggested including a small amount of information, such as the section's title.

In reviewing Virginia's student disciplinary statutes for ways to improve clarity, additional issues were identified. While these issues are not strictly technical in nature, analysis reveals that opportunities exist to improve the disciplinary process.

¹⁸ See Appendix C for flow charts depicting locally imposed procedures.

As stated previously, consistency in administering student discipline was identified as a significant issue to be addressed during this study. Review and analysis of a sampling of local student conduct codes revealed that school boards use several methods when making disciplinary determinations.¹⁹ All of the local codes reviewed provide students with the standards and expectations for student conduct. What disciplinary action(s) would be taken for a violation of a standard can be less apparent. The most frequently used method is one in which a list of possible corrective actions available to school officials is provided, with a statement that the consequences will be determined on a case-by-case basis with consideration given to the facts of the case. It is left within the “reasonable discretion” of the school board or school officials to make the disciplinary determination.

Consistency in applying disciplinary procedures is highly desirable from the perspective of students and parents. However, any movement toward this consistency must be balanced with the local school boards’ ability to maintain discretion in making disciplinary decisions. Discretion allows a school board or school official to consider the student’s disciplinary history, the student’s age and ability to understand the behavioral standard, and other relevant factors prior to making a disciplinary recommendation. A codified prescription for the use of certain disciplinary actions, such as expulsion, would limit this discretion and may negatively impact the student, since individual characteristics of the student and circumstances of the incident would not be considered.

Another area of significant concern was the readmission of expelled students after expulsion. This includes the ability of school boards to exclude students expelled or suspended from other school divisions, and a student’s ability to continue to apply for readmission to the expelling school division.

Existing Virginia law provides that an expelling school board may determine “that the student is ineligible to return to regular school attendance.” Upon this determination, the school board shall provide written notice advising the parent “that the student may petition the school board for re-admission after one calendar year from the date of his expulsion, and the conditions, if any, under which re-admission may be granted.”²⁰ Two issues are related to this provision. First, there is no requirement that an expelling school board readmit a student whom they have expelled. Second, there is no statutory limit on the number of times a student may reapply for admission to the expelling school board.

In contrast to the provisions that apply to the expelling school board, Virginia law limits the ability of a school board, to whom the expelled student has applied for admission, to refuse admission to the expelled student. This school board may “exclude,” for no more than one year, a student who was expelled “for an offense in violation of school board policies related to destruction of school property or privately-owned property while located on school property, weapons, alcohol or drugs, or for the

¹⁹ See Appendix D

²⁰ § 22.1-277.03 C

willful infliction of injury to another person...upon a finding that the student presents a danger to the other students or staff of the school division.”²¹ Differences in authority of the expelling school and the “excluding” school to refuse admittance of an expelled student were of significant concern to school boards. The primary concern was that an excluding school board is required to accept, after one year, a student who was expelled from another division without regard to the continuing danger posed by that student to other students and staff. In some instances, readmission to the expelling division has been refused due to concerns that the student’s behavior has not improved. The inability of the excluding school board to continue to exclude the expelled student may jeopardize the safety of students and staff.

Also related to the admission of an expelled student is the authority for a school board to which the student has applied for admission to enforce the conditions for readmission imposed by the expelling school board. While authority is clearly given to the expelling school board to place on the student conditions under which re-admission may be granted,²² similar authority is not given to the school board where the student has petitioned for admission. Providing a school board with authority to enforce the conditions placed on the student by the expelling school board prevents the student from escaping consequences or responsibilities by moving to a new division. Enforcement of the conditions may give the decision of the expelling school more credibility and weight. This study also revealed that enforcement of the conditions is not always the preferred course, and that it may be the opinion of the school board reviewing the petition for admission that some or all of the conditions imposed by the expelling school be waived.

Recommendations for education and training are frequently included in response to requests for the study of issues. Similarly, this study identified several areas in which education and training were the most appropriate response to identified concerns. These areas included the following:

- The initiation of a long-term suspension or expulsion;
- Time limits for student appeal of a suspension or expulsion;
- Use of the “special circumstances” provisions of the Drug Free Schools Act and the Gun Free School Act; and
- The use of expulsion as a last resort, for the most serious of offenses or after a series of prior violations.

Upon further analysis of these issues, it was determined that changes to disciplinary statutes were not needed. Instead, information and education on school boards’ existing authority and the presentation of alternative local policies and procedures were identified as desirable alternatives. Additional opportunities for education and training of school officials and school board members who are responsible for the implementation of student disciplinary statutes were recommended.

²¹ § 22.1-277.2

²² § 22.1-277.03

Several issues arose related to the notification of the adjudication or conviction of a student that is required to be given to a District Superintendent by a Juvenile and Domestic Relations District Court clerk. *Virginia Code* section 16.1-305.1 requires that upon disposition in certain proceedings, the clerk shall "provide written notice of the disposition ordered by the court, including the nature of the offense upon which the adjudication or conviction was based, to the superintendent of the school division in which the child is enrolled at the time of the disposition or, if he is not then enrolled in school, the division in which he was enrolled at the time of the offense." Upon receipt of that report, *Virginia Code* section 22.1-277.02 authorizes the suspension or expulsion of the student.

Other than the distribution of that report to the principal and school personnel responsible for the management of student records (*Virginia Code* section 22.1-288.2), there is no procedure outlined for handling these reports. School boards expressed concern that some superintendents receive the information required by *Virginia Code* section 16.1-305.1 and then take no further action leaving school boards uninformed and unable to take disciplinary action. Unless the superintendent notifies the school board when he/she receives the reports, the school board may not have any knowledge that the student has been adjudicated delinquent or convicted of a crime.

During the study's review of the above concerns, additional issues were raised, including the following:

- Communication of the contents of the report to a student's new school division and resulting dilemmas such as the confidentiality of these reports and their exclusion from the definition of "scholastic record";²³
- Local school boards ability to direct and oversee the superintendent in making or failing to make disciplinary recommendations;
- Consistency of the disciplinary recommendations; and
- Timeliness of the delivery of the reports to the superintendents.

As this study was limited in its scope to providing clarification and definitions, these issues went beyond the study's purview. Likewise, because such issues were not contemplated, representatives from the courts and persons with such expertise were not included on the Advisory Group. Recommendations for further study of these issues were made.

Finally, two additional topics were identified that were consistent with the study's goal of clarifying student disciplinary statutes. Both topics were somewhat technical in nature and required clarification or the filling of a "loophole." These topics include a student's responsibility for school property he/she fails to return, and the school board's affirmation of expulsion recommendations.

²³ § 22.1-289

C. ALTERNATIVE EDUCATION

A public education is not a fundamental right guaranteed by the U. S. Constitution.²⁴ However, the Virginia Constitution does guarantee the right to a free public education: "The General Assembly shall provide for a system of free public elementary and secondary schools for all children of school age throughout the Commonwealth, and shall seek to ensure that an educational program of high quality is established and continually maintained."²⁵ This Constitutional mandate has been implemented through the enactment of Title 22.1 of the *Code of Virginia*. Since these "Virginia statutes extend the right of education to pupils of certain ages, that right may not be withdrawn on the grounds of misconduct, absent fundamentally fair procedures to determine whether the misconduct has occurred."²⁶

Although Virginia's Constitution provides for the right to a free, public education, this right is not an unfettered right and access to educational services may be denied once due process requirements have been met. However, the denial of educational services is not, for most disciplined students, the preferred course of action. In many cases, the loss of educational opportunities does not further the interests of the children or their communities.

Alternative education programs provide many disciplined students an opportunity to continue their education, although not all placements in alternative education programs are for disciplinary reasons.²⁷ Not only do the alternative education programs provide educational opportunities, they also may prevent a student from dropping out or becoming involved with the criminal justice system.²⁸ Because of the significant link between student discipline and alternative education programs, this study included a discussion of alternative education programs.

There appears to be little disagreement about the benefits of alternative education programs. However, the challenge has been in obtaining adequate resources to provide alternative education programs.

Pursuant to House Joint Resolution 242, the Commission on Youth and the Virginia Department of Education completed a study of Alternative Education in 1999, in which ninety-eight percent (129) of the 132 divisions in Virginia reported availability of local alternative education programs. However, fifty-four percent of the superintendents reported that their school division had unmet needs, totaling approximately 10,545 placements, for alternative education placements during the 1998/99 school year.

²⁴ *San Antonio Indep. Sch. Dist. v. Rodriguez* 411 U.S. 1, 35 (1973).

²⁵ Va. Const. art. VIII, § 1. (1971).

²⁶ Thomas J. Cawley *et al.*, *Handbook for Local Government Attorneys*, Chapter 15, page 21 (1995)

²⁷ Report of Data Findings, H.J.R. 242 (Va. 1998), Study of Alternative Education (October 7, 1999) (unpublished report on file with the Virginia Commission on Youth).

²⁸ *Opportunities Suspended: The Devastating Consequences of Zero Tolerance and School Discipline Policies*, Report by the Advancement Project and the Civil Rights Project, Harvard University, (June 2000).

The 1999 HJR 242 study also found that forty-nine percent (49%) of the students who were long-term suspended or expelled received no educational placement during the period of the disciplinary sanction.²⁹ This represents a significant number of children who did not receive educational services and, therefore, are at an increased risk of dropping out of school or of engaging in other delinquent behavior.

Based upon the findings of the HJR 242 study, the Commission on Youth submitted a budget amendment to the 2000 Session of the General Assembly for approximately \$17 million to support alternative education statewide. The requested amount was based on a statewide average placement ratio for all elementary, middle and high school level cases at an average of 5.6 placements per 1,000 students (6,258) and an average cost per pupil of \$5,401. In the 2000 Session of the General Assembly, a small portion, \$400,000, of the approximately \$17 million requested was appropriated in the first year for a grant program to provide alternative education in the elementary schools.

Also it is important to note that in addition to the \$400,000 General Funds appropriated for fiscal year 2001 for elementary school pilots, the General Assembly took two additional actions to increase the number of children served through alternative programs. One of these actions provided \$474,181 in General Funds for fiscal year 2001, and \$474,074 in General Funds for fiscal year 2002, to increase by 8.5 percent the number of children served in the local regional alternative education programs. Also, the school divisions of Southampton and Colonial Beach, which had recently requested to participate in the regional programs, would now be included. Finally, another action provided \$77,640 General Funds for fiscal year 2001 and \$77,650 for fiscal year 2002, to establish a new regional alternative education program for the counties of Bedford and Roanoke (providing services for 27 additional students).

D. USE OF TECHNOLOGY TO PROVIDE EDUCATIONAL SERVICES TO STUDENTS WHO HAVE BEEN EXPELLED.

Technology and advancements in distance learning have enabled alternative education programs to reach students in their homes. The availability of these education resources in the student's home provides benefits to both the school divisions and the students. Because of the generally reduced cost of these programs, the school division can reach more students and can do so without the need for a facility or large faculty. Additionally, the general student population benefits from a less disruptive and potentially less dangerous school setting. Participating students who have been long-term suspended or expelled and, under ordinary circumstances, would be considered a threat to the safety of other students and not allowed to participate in a classroom setting, have an opportunity to continue their education. Students also enjoy more ownership over their learning, meeting the needs of some students who benefit from more autonomy.

²⁹ For this study, information on 7,513 disciplinary cases was collected. Of this number 3,819 were long-term suspensions or expulsions, therefore the 49% represents 1,871 cases.

One such program is Project RETURN (Renewing Education through Use of Regional Network). Project RETURN is a regional alternative education project piloted and operated by the Fluvanna County Public Schools through the sponsorship of the Commonwealth of Virginia offering "an alternative to both home bound instruction and to alternative education as it is practiced in Virginia."³⁰

The following twenty-two school divisions, including Fluvanna County, participate in the program: Alleghany Highlands Public Schools, Bath County Public Schools, Botetourt County Public Schools, Buchanan County Public Schools, Charles City County Public Schools, Clarke County Public Schools, Craig County Public Schools, Culpeper County Public Schools, Floyd County Public Schools, Franklin County Public Schools, Giles County Public Schools, Grayson County Public Schools, Green County Public Schools, Halifax County Public Schools, Highland County Public Schools, Lancaster County Public Schools, Madison County Public Schools, Orange County Public Schools, Radford City Public Schools, Shenandoah County Public Schools, and Smyth County Public Schools.

The program serves students in grades K-12. The program's Project Coordinator develops and presents tools and options to the schools, including new curriculums, and acts as the distribution point for state funding. State grant funding for the program requires at least three students in each of the divisions. In 1999-2000, there were 353 students in the program. The program has the following three objectives:

- To provide a quality education to excluded students who cannot return to the regular school because of disciplinary actions or illness;
- To assist students in their transition back to a regular classroom setting;
- To involve students and their parents in the students' education.

Each participating division tailors the program to the locality's needs. The project uses instructional software available either in a school facility or on computers placed in the home, although some divisions have adapted the program to group instruction and classroom settings. When instruction is through the use of instructional software, each student is assigned a mentor teacher who meets with the student twice a week. The mentor/teacher is assisted one hour per week by a counselor who works with the student to address the student's underlying issues, which may have contributed to the student's difficulties.

RETURN uses proprietary, instructional software. Use of the Internet is available, although access is limited. A disk that allows controlled access is provided to the student. Instructors have an enhanced access, which allows them to monitor the student's progress prior to their visit with the student. A curriculum more aligned with the Standards of Learning (SOLs) is desired, although if existing software is used, it will most likely require a combination of different software.³¹

³⁰ Jim C. Fortune, *Evaluation of Fluvanna County's Project Return* (June 25, 2000).

³¹ *Id.*

E. EDUCATION AND TRAINING OF ALTERNATIVE EDUCATION TEACHERS

Alternative education teachers face challenges in addition to those experienced by teachers in traditional settings. Many of these students engage in disruptive behaviors, have difficult family situations, are classified as "at-risk," and possess unique learning styles.

Principals of alternative education schools report that it is critical that teachers want to work in an alternative education setting.³² In fact, some alternative education teachers are in their second careers, and with their diverse career backgrounds, experience great success in this environment.

Although training for alternative education teachers was found to be very important, the establishment of a new certification or endorsement was specifically rejected. While training geared to working with these students is helpful, a special certification was seen as unnecessary and may potentially prohibit teachers from teaching in these settings.

The education or training contemplated by this study may be acquired through pre-service or in-service training. In-service training is offered on a local basis with course offerings generally determined by the principal of the local alternative education school.

Experienced teachers (three or more years of teaching or education-related experience) who want to continue to develop professionally and who wish to do so through a more formal continuing education program, may participate in the graduate level program offered at George Mason University located in Fairfax, Virginia. This is a thirty (30) hour Master's degree program offered through the Graduate School of Education's Advanced Studies in Teaching and Learning (ASTL) program. Students in this program may choose an emphasis in alternative education and earn either a master's degree or a certificate.

George Mason University approved the program in May 1999, and the first class was offered in the fall of 1999. Approximately 26 educators, most from Northern Virginia, have taken the courses. Educators may enroll on either a full or part-time basis, although most continue to teach while working toward their degree or certificate.

The program is directed to teachers rather than administrators, and requires that the educator have a minimum of 3 years of documented successful teaching or related education experience if pursuing the CORE piece, and 2 years experience to begin an emphasis area. Most of the teachers who enroll in the alternative education emphasis are alternative education teachers. If they are not already in alternative education already, most are enrolled because of an interest in or positive observation of an

³² Telephone Interview with Brenda Neale, Principal, Winchester Alternative Learning Center (Aug. 9, 2000).

effective alternative education program, and they want to help this population of students.

This study did not reveal other official certificate or master's programs for alternative education in Virginia. It was reported that there may be at least one other university interested in starting one.³³ George Mason would like to offer its program in other parts of the state when there is enough interest for a class. Outside of Virginia there are two programs with slightly different approaches. One is at Harvard and the other at the University of Colorado at Boulder.

Harvard offers the Risk and Prevention Program at the Harvard Graduate School of Education. Since its inception in academic year 1992/93, 417 students have been trained with approximately 60 students admitted each year.³⁴ The program "evolved from a practicum course designed by the Risk and Prevention Director, Prof. Robert L. Selman, to train students in prevention intervention in low-income schools and community settings."³⁵ Students completing the program "can expect to pursue positions as specialists in prevention and lifelong enhancement programs in both traditional and nontraditional (e.g. comprehensive and full-service) schools, early-childhood and youth-services agencies, and other educational settings."³⁶

The program at the University of Colorado at Boulder is through the School of Education and offers both doctorate and masters degrees. Both degree programs offer a specialty (Ph.D.) or emphasis (MA) in alternative/experiential education. Available literature describes the Ph.D. program as research-oriented and "an ideal degree for those interested in the processes of instruction and learning in a particular subject area, in literacy, in the education and development of teachers, or in alternative/experiential education."³⁷ Whereas, the masters program is "designed for persons who are planning to be teachers in secondary schools and will use the outdoor setting" as one of many learning environments.³⁸

³³ E-mail from Jane Razeghi, Ph.D., Associate Professor, George Mason University to Kristi S. Wright, Esq., Legislative Policy Analyst, Virginia Commission on Youth (Sept. 11, 2000) (on file with recipient).

³⁴ Harvard Graduate School of Education, Risk and Prevention Specialized Master's Degree Program, at www.gse.harvard.edu/~rp/program_overview.htm (Sept. 20, 2000).

³⁵ *Id.*

³⁶ *Id.*

³⁷ University of Colorado at Boulder, School of Education, Ph.D. in Instruction and Curriculum in the Content Areas Program, at <http://www.colorado.edu/education/graduate/phd/ICCA.html> (Sept. 20, 2000).

³⁸ University of Colorado at Boulder, School of Education, Masters in Instruction and Curriculum in the Content Areas Program (ICCA), at http://www.colorado.edu/education/graduate/masters/ICCA_secondary.html (Sept. 20, 2000).

VII. Findings and Recommendations

A. DEFINITIONS

FINDINGS:

Commonly used disciplinary terms are not defined in the *Code of Virginia*. Instead, custom and practice have dictated the use of the terms, creating inconsistent definitions and local policies. Differences in the way these terms are defined can result in an inequitable application of disciplinary procedures from one school division to another, thereby causing confusion for parents and the children who face disciplinary action.

RECOMMENDATION 1:

Amend the *Code of Virginia* to include the following definitions:

- ***Short-term suspension*** means any disciplinary action wherein a student is not permitted to attend school for 10 school days or less.
- ***Long-term suspension*** means any disciplinary action wherein a student is not permitted to attend school for more than 10 school days but less than 365 calendar days. Pursuant to local school board policy, a student who has been long-term suspended may be permitted or required to attend an alternative education placement or program provided by the local school division.
- ***Expulsion*** means any disciplinary action wherein a student is not permitted, by a school board or committee of the school board, to attend school within a school division and is ineligible to apply for readmission for 365 calendar days after the date of the expulsion. At the discretion of the local school board, an expelled student may be permitted or required to attend an alternative education program provided by the local school. Petitions for readmission may be submitted, 365 calendar days after the date of the expulsion, in accordance with the procedures set forth in section ----- (*to be named later*) and any procedures established by the local school board.
- ***Exclusion*** means the denial of admission by a school board in Virginia of a student who has been expelled or long-term suspended for more than 30 calendar days by another school board or a private school in this Commonwealth or in another state, or for whom admission has been withdrawn by a private school in this Commonwealth or in another state. At the discretion of the local

school board, an excluded student may be permitted or required to attend an alternative education program provided by the local school.

- An *alternative education program* includes, but is not limited to, night school, adult education, or any other educational program designed to offer instruction to students for whom the regular program of instruction may be inappropriate.

B. FACTORS FOR CONSIDERATION IN EXPULSIONS

FINDINGS:

It is within the discretion of each school division to determine for which offenses and under what circumstances a student will be expelled for a violation of local school board policy. As a result, there may be inconsistencies in the issuance of expulsions among the different school divisions in Virginia. A codified prescription on the use of expulsion was not seen as a viable alternative since it does not take into account the individual characteristics of the student or the circumstances of the violation. However, guidance to superintendents on what should be considered prior to a recommendation for expulsion was seen as desirable and may reduce inconsistency in the administration of expulsions.

RECOMMENDATION 2:

The *Code* should be amended to include a list of factors to be considered by the division superintendent prior to a decision to expel a student. Language similar to the following is recommended:

Before making a recommendation for expulsion for violations other than those specified under *Virginia Code* section 22.1-277.01 (Gun Free Schools Act) and section 22.1-277.01:1 (Drug Free Schools Act), a superintendent shall consider, but not be limited to, the following factors:

1. Nature and seriousness of the violation
2. Degree of danger represented to the school community
3. Disciplinary history, including the seriousness and number of prior violations
4. The appropriateness and availability of an alternative education placement or program
5. Age of the student
6. Grade level
7. Results of mental health, substance abuse or special education assessments
8. Record of previous intervention attempts
9. Attendance record

10. Academic record
11. Other factors as appropriate

No decision to suspend or expel a student shall be reversed on the grounds that the superintendent failed to consider any of the factors specified in this section.

Nothing in this section shall be deemed to preclude a school board from considering these factors as special circumstances authorized in *Virginia Code* section 22.1-277.01 (Gun Free Schools Act) and section 22.1-277.01:1 (Drug Free Schools Act).

C. SCHOOL BOARD AFFIRMATION OF EXPULSION

FINDINGS:

The *Code of Virginia* does not state explicitly that only a school board (or school board committee, if permitted by local regulations) may expel a student. However, the procedure outlined in *Virginia Code* section 22.1-277 D requires that formal action to “confirm or disapprove” the proposed action (expulsion) should be taken by the school board or if allowed by regulation, the committee of the school board. Based upon this authority, it is commonly accepted that only a school board may expel a student.

Unless a student takes advantage of the hearing before the school board or its committee, in some cases formal action by the school board to expel the student may not occur, and technically the child would not be expelled. A review by the school board enables the school board to “confirm or disapprove” all expulsion actions, thereby informing the school board of the expulsions within their division. Also, this may act as an added protection for students who have been recommended for expulsion and who may not otherwise bring the matter before the school board.

RECOMMENDATION 3:

- Amend the *Code* to specify that a school board (or school board committee, if provided by regulations) must affirm each expulsion, regardless of whether the student has exercised his/her right to appeal. It is recommended that this be placed in the section dealing with expulsion procedures.

D. READMISSION AFTER EXPULSION

FINDINGS:

Existing law sets forth no requirement for an expelling school board to readmit a student whom they have expelled. Although, a student, after being denied re-admission by the expelling school board, may continue to reapply for re-admission.

In contrast, if an expelled student applies for admission at another school division, that school board may exclude (deny admission to) the student for no more than one year. In addition to this limitation, students may be excluded only when the following two circumstances exist:

- “[U]pon a finding that a student presents a danger to the other students or staff of the school division,” and
- The student was expelled for “an offense in violation of school board policies related to destruction of school property or privately-owned property while located on school property, weapons, alcohol or drugs, or for the willful infliction of injury to another person.”³⁹

School boards that are required to admit expelled students express concern that they must admit these students whom the expelling school boards will not re-admit and may even view as a danger. This inequity in admission requirements is viewed as a significant issue.

RECOMMENDATION 4:

- **Amend the *Code of Virginia* to allow a school board to exclude a student, regardless of the offense for which they were expelled or suspended, but continue to require that the school board find that the student poses a danger to students or staff.**

RECOMMENDATION 5:

- **Amend the *Code* to eliminate the one-year maximum on exclusion when the student was expelled or admission was withdrawn. The limit on the length of an exclusion of a suspended student would not change and would continue to be limited to the length of the suspension.**

FINDINGS:

Upon expulsion, an expelling school board may set terms and conditions for the re-admission of the expelled student. Under existing law, if that student applies for admission in another school division and the school board chooses to exclude, at the end of the exclusion, the student must be admitted thereby allowing the student to avoid meeting any of the terms and conditions set by the expelling school board.

³⁹ VA. CODE ANN. § 22.1-277.2 (Michie 2000)

It was recognized that while the school board, to whom the student has petitioned for admission, may find that the terms or conditions set by the expelling school board should be met; they also may find them to be inappropriate or unnecessary. There was consensus that by providing the excluding school board with the *option* to require that the terms and conditions be upheld or rejected, the interests of the student as well as the school division are protected.

RECOMMENDATION 6:

- **Amend the *Code of Virginia* so that local school boards may accept or waive any or all of the conditions for readmission imposed by the expelling school board.**

E. NOTIFICATION OF ADJUDICATION OR CONVICTION

FINDINGS:

Virginia Code section 16.1-305.1 requires that upon disposition in certain proceedings, the clerk shall "provide written notice of the disposition ordered by the court, including the nature of the offense upon which the adjudication or conviction was based, to the superintendent of the school division in which the child is enrolled at the time of the disposition or, if he is not then enrolled in school, the division in which he was enrolled at the time of the offense." Upon receipt of that report, *Virginia Code* section 22.1-277.02 authorizes the suspension or expulsion of the student.

Other than the distribution of that report to the principal and school personnel responsible for the management of student records (*Virginia Code* section 22.1-288.2), there is no procedure outlined for handling these reports. School boards expressed concern that some superintendents receive the information required by *Virginia Code* section 16.1-305.1 and then take no further action, leaving school boards uninformed and unable to take disciplinary action. Unless the superintendent notifies the school board when he/she receives the reports, the school board may not know that the student has been adjudicated delinquent or convicted of a crime.

In consideration of the limited nature of this study, an extensive and substantive review of the numerous issues raised by these concerns was beyond its purview. Likewise, because coverage of such topics was not anticipated, representatives from the judicial branch, necessary for a thorough review, were not included on the Advisory Group. Nevertheless, these issues remain unresolved and problematic for school divisions.

RECOMMENDATION 7:

- **The Superintendents–Judges Liaison Committee should address issues of concern regarding the communication of information contained in reports to superintendents made pursuant to *Virginia Code* section 16.1-305.1. Specific issues include the need for school boards to be informed of the adjudication or convictions of students in their division, confidentiality of these reports, oversight of the superintendent in making or failing to make disciplinary recommendations in these matters, and the consistency of the disciplinary recommendations made in these cases.**

FINDINGS:

There are situations in which a student is adjudicated or convicted of a crime that is reportable to the Superintendent pursuant to *Virginia Code* section 16.1-305.1, but prior to the submission of the report to the Superintendent, the student moves from the division and applies for admission in another school division. The concern is that the original jurisdiction does not know to where the child moved and no action related to the report is taken. Also, the receiving school division is unaware of the criminal offenses since the report is not a part of the scholastic record.

RECOMMENDATION 8:

- **The Superintendents–Judges Liaison Committee should address this gap to determine if any changes to procedures or the law are necessary, while balancing the student’s right to confidentiality and the school board’s desire to ensure a safe school environment.**

F. PERMISSION OR REQUIREMENT TO ATTEND ALTERNATIVE EDUCATION PROGRAM

FINDINGS:

Two problems are addressed by this recommendation. The first is that under the proposed definition of expulsion an expelled student would not be permitted to attend any school within the jurisdiction of that school division, unless the local school board grants permission. There was agreement that there may be situations in which it is appropriate to allow a student who has been expelled to attend an alternative education program, rather than prohibit school attendance within the division. A determination that an expelled student be allowed to attend an alternative education program should be within the discretion of the school board.

The second issue is the local school board’s authority to *require* a long-term suspended or expelled student to attend an alternative education program. Where available, disciplined students may attend an alternative education program but are

not required to do so. For many students, a long-term suspension or expulsion is seen as an opportunity to exert their independence and create mischief. Requiring attendance at an alternative education program may prevent students from engaging in potentially harmful behaviors. Also, by requiring the student's attendance, the student then would be subject to compulsory attendance laws, and non-compliance by the student would have more substantial consequences.

The authority to permit or require a student to attend an alternative education program would be in addition to the disciplinary authority already granted to school boards to assign a student to an alternative education program under the circumstances enumerated in *Virginia Code* section 22.1-277.1.

RECOMMENDATION 9:

- **The Code should be amended to provide the following authority to local school boards: A student who has been long-term suspended or expelled may be permitted or required to attend an alternative education program provided by the school division. A statement regarding this authority also should be included in the definitions of long-term suspension, expulsion, exclusion, and in the section that sets forth the procedures for readmission of suspended and expelled students (currently *Virginia Code* section 22.1-277.03).**

G. PROPERTY VIOLATION

FINDINGS:

Virginia Code section 22.1-276 states that pupils shall be required to reimburse the school board for any actual breakage or destruction of property owned by or under the control of the school board. This section fails to include that pupils are responsible for the value of items they fail to return.

RECOMMENDATION 10:

- **Amend *Virginia Code* section 22.1-276 by adding “failure to return property owned by or under the control of the school board” to the list of actions for which a student is required to reimburse the school board.**

H. EDUCATION AND TRAINING

FINDINGS:

A number of concerns identified during the course of this study resulted from a lack of understanding of existing law or inconsistent application of existing

procedures. Amending the *Code* was not seen as a necessary or desired approach to these concerns.

RECOMMENDATION 11:

- **The Virginia Department of Education, the Virginia School Board Association, the Virginia Association of School Superintendents, the Virginia Association of Elementary School Principals, and the Virginia Association of Secondary School Principals should provide opportunities for education and training to school divisions or their constituents, as appropriate, on the student discipline provisions of the *Virginia Code* and the use of the discretion afforded to local divisions.**

I. STATUTORY CONSTRUCTION

FINDINGS:

Title 22.1, Chapter 14, Article Three of the *Code of Virginia* which deals with discipline has been amended numerous times over the years. While these amendments have produced the desired substantive results, they also have contributed to a piecemeal construction that is difficult to use and understand, especially for parents, school administrators and school board members who may or may not have legal training.

- A draft outline for this reorganization was approved by the Advisory Group and is presented as a starting point for Legislative Services.

RECOMMENDATION 12:

- **Title 22.1, Chapter 14, Article Three of the *Code of Virginia* should be reorganized to improve the usability of this section.**

FINDINGS:

School administrators, school board members and parents find it cumbersome to read these sections of the *Code* when there are frequent cross-references to other *Virginia Code* sections not located in Title 22.1. While it is understood that there is no substitute for the thorough reading of all referenced *Code* sections, it is felt that inclusion of descriptive phrases would act as a reminder of the content of those referenced sections and would reduce the need to access those sections. The addition of descriptive phrases for references to sections in Title 22.1. was seen as unnecessary.

RECOMMENDATION 13:

- It is recommended that the titles of the referenced *Virginia Code* sections be added as descriptive phrases in the following *Virginia Code* sections:
 - In sections 22.1-277.01 descriptive phrases should be added for sections 18.2-308.1 and 18.2-308.
 - In section 22.1-277.01:1 descriptive phrases should be added for section 18.2-247.
 - In sections 22.1-277.02 descriptive phrases should be added for section 16.1-305.1.
 - In section 22.1-277.1 descriptive phrases should be added for section 16.1-305.1.

J. ALTERNATIVE EDUCATION

Alternative education is an important component in the education of students who have been disciplined. Three aspects of alternative education received attention.

FUNDING FOR ALTERNATIVE EDUCATION PROGRAMS:

FINDINGS:

Pursuant to House Joint Resolution 242, the Commission on Youth and the Virginia Department of Education completed a study of Alternative Education in 1999 and reported their findings to the 2000 Session of the General Assembly. This study found that while students may attend an alternative education program for a number of reasons, students frequently attend as a result of disciplinary actions. Fifty-four percent of the superintendents reported that their school division had unmet needs for alternative education placements, totaling about 10,545 placements during the 1998/99 school year. The 1999 House Joint Resolution 242 study also found that 49% of the students who were long-term suspended or expelled received no educational placement during the period of the disciplinary sanction.

The Commission on Youth found that the availability of alternative education for disciplined students is critical to meeting the continuing educational needs of these students. The availability of alternative education may also prevent these students from engaging in other delinquent behavior by involving them in useful and productive activities.

Although there were minimal increases in funding appropriated during the 2000 Session of the General Assembly, the need for additional support of alternative education remains, and the findings made in the 1999 House Joint Resolution 242 study continue to be appropriate.

RECOMMENDATION 14:

- **The Commission on Youth should submit a budget amendment based upon the findings made in the 1999 House Joint Resolution 242 study which would enable existing alternative education programs to address unmet needs.**

PREPARATION OF ALTERNATIVE EDUCATION TEACHERS:

FINDINGS:

Teaching in an alternative education setting requires additional skills beyond those needed to teach a particular subject matter. These additional skills may include a knowledge of the nature of at-risk youth and their families, various instructional strategies for use with at-risk youth, classroom management, including conflict and crisis management, and knowledge of other agencies and resources for the students. These skills may be acquired through pre-service or in-service training.

There is only one known program in Virginia (at George Mason University) which offers a graduate-level program for teachers who want to specialize in alternative education. In-service training is offered on a local basis and is generally determined by the local principal of that facility. Throughout discussions related to additional training for alternative education teachers, the establishment of a separate certification for alternative education was specifically rejected.

RECOMMENDATION 15:

- **The Virginia Department of Education should support and explore the development of undergraduate and graduate-level programs, not for certification or licensure, similar to those at George Mason University, which offer professional education courses with an emphasis in alternative education.**

RECOMMENDATION 16:

- **The Virginia Department of Education should support and encourage the availability of in-service training courses, which address the specific needs and concerns of alternative education teachers.**

USE OF TECHNOLOGY FOR INSTRUCTION IN ALTERNATIVE EDUCATION PROGRAMS:

FINDINGS:

Two issues drive the following recommendation. The first is the need for an alternative method of instruction for students who, due to security and safety concerns, are felt to be inappropriate for a classroom setting. The second is the

need to provide instruction in the most cost-effective manner to students who have been long-term suspended or expelled.

RECOMMENDATION 17:

- **The Virginia Department of Education should explore the development of a statewide curriculum using interactive educational software, which meets Standard of Learning requirements. The development of this software could benefit not only disciplined students but also those who need tutorial assistance.**

VIII. Acknowledgments

In addition to the workgroup members, the Virginia Commission on Youth extends its appreciation to the following individuals and agencies for their assistance and cooperation on this study:

George Mason University

Jane A. Razeghi, Associate Professor

Project RETURN

Karen Wormley, Director

Region Five Superintendents' Group

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Virginia Division of Legislative Services

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Virginia Parents and Teachers Association

Pat Greene, Juvenile Protection Chairman

Appendix A

HOUSE JOINT RESOLUTION NO. 186

Offered January 24, 2000

Establishing a joint subcommittee to study student disciplinary statutes.

Patrons-- Amundson, Albo, Baskerville, Bolvin, Brink, Callahan, Dillard, Hull, McClure, Plum, Scott, Van Landingham and Watts; Senators: Byrne, Couric, Howell, Puller and Whipple

Referred to Committee on Rules

WHEREAS, Article 3 of Chapter 14 of Title 22.1 establishes the laws for student discipline in the public schools of the Commonwealth; and

WHEREAS, the student disciplinary statutes were first codified almost 50 years ago; and

WHEREAS, during the past 50 years, the nature and severity of discipline problems confronting public schools and school personnel daily have changed substantially, and the courts, and federal and state governments have become increasingly involved in establishing student disciplinary policies and procedures; and

WHEREAS, the student discipline statutes, amended annually by the General Assembly, have become increasingly more difficult to interpret and administer due to inconsistencies in the laws, and the intent of the statutes has become obscured; and

WHEREAS, student discipline laws that are understandable, consistent, and fair allow schools and teachers to ensure due process, minimize classroom disruptions, promote student safety, and enhance the learning environment; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That a joint subcommittee be established to study student disciplinary statutes. The joint subcommittee shall be composed of 10 legislative members, to be appointed as follows: six members of the House of Delegates, to be appointed by the Speaker; and four members of the Senate, to be appointed by the Senate Committee on Privileges and Elections.

During the course of its deliberations, the joint subcommittee shall collaborate and communicate with other study committees charged to examine related issues. It shall also confer with the Secretary of Education, the President of the Board of Education, the Superintendent of Public Instruction, representatives of the Virginia Parents and Teachers Association, the Virginia School Boards Association, the Virginia Education Association, the Virginia Association of School Superintendents, the Virginia Association of Elementary School Principals, the Virginia Association of Secondary School Principals, the Virginia Counselors Association, the Virginia Association of Chiefs of Police, the Virginia Sheriffs Association, the National School Safety Center, and other recognized national and state organizations involved law enforcement and in the research, investigation, and study of school safety and student conduct issues which may further its work.

In conducting the study, the joint subcommittee shall:

1. Conduct a comprehensive review and analysis of U. S. Supreme Court, and other federal and state court decisions relating to student discipline, due process, and suspension and expulsion;
2. Review the provisions of Article VIII, § of the Virginia Constitution which bestows a constitutional right to a free public education to all school age children of the Commonwealth and recommend ways to reconcile the constitutional mandate, statutory provisions regarding expulsions, the general practice among school divisions respecting long-term suspensions and expulsions, and inconsistencies in the interpretation and application of the laws pertaining to expulsions among school boards;
3. Review the provisions of federal and State laws pertaining to student conduct and discipline; suspension, exclusion, and expulsion; school board policies pertaining to these issues; school crime reporting requirements and the disclosure of certain student information; alternative education programs for disruptive students; and parental involvement;
4. Ascertain and evaluate the procedures used by local school boards to develop and administer student discipline policies and procedures;
5. Review, discuss, and consider the findings and recommendations of the Summit on School Violence and previous and on-going study committees that examined school violence and safety issues to avoid unnecessary replication of efforts; and
6. Consider issues inherent in Senate Joint Resolution 85 (1996), and address concerns that minority students disproportionately receive more severe sanctions for violating school board student conduct and disciplinary policies;
7. Inventory alternative discipline procedures for handling cases at the local level;
8. Recommend ways to restore balance in the approach taken by public schools to deal with school safety crises and violations of school board policies to provide prompt, consistent, and decisive disciplinary action when warranted, while ensuring equity, due process, and the safety of students and school personnel;
9. Recommend approaches for substantive revisions to State laws pertaining to school crime and violence; compulsory school attendance law; student conduct and disciplinary issues; suspension, exclusion, and expulsion; alternative education programs for disruptive students; disclosure of certain student information; and such other statutes that impact or are intertwined with any of the issues being considered by the joint subcommittee; and
10. Consider such related issues as the joint subcommittee may deem appropriate and necessary.

The direct costs of this study shall not exceed \$19,500.

The Division of Legislative Services shall provide staff support for the study. All agencies of the Commonwealth shall provide assistance to the joint subcommittee, upon request.

The joint subcommittee shall complete its work in time to submit its findings and recommendations to the Governor and the 2002 Session of the General Assembly as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents.

Implementation of this resolution is subject to subsequent approval and certification by the Joint Rules Committee. The Committee may withhold expenditures or delay the period for the conduct of the study.

Appendix B

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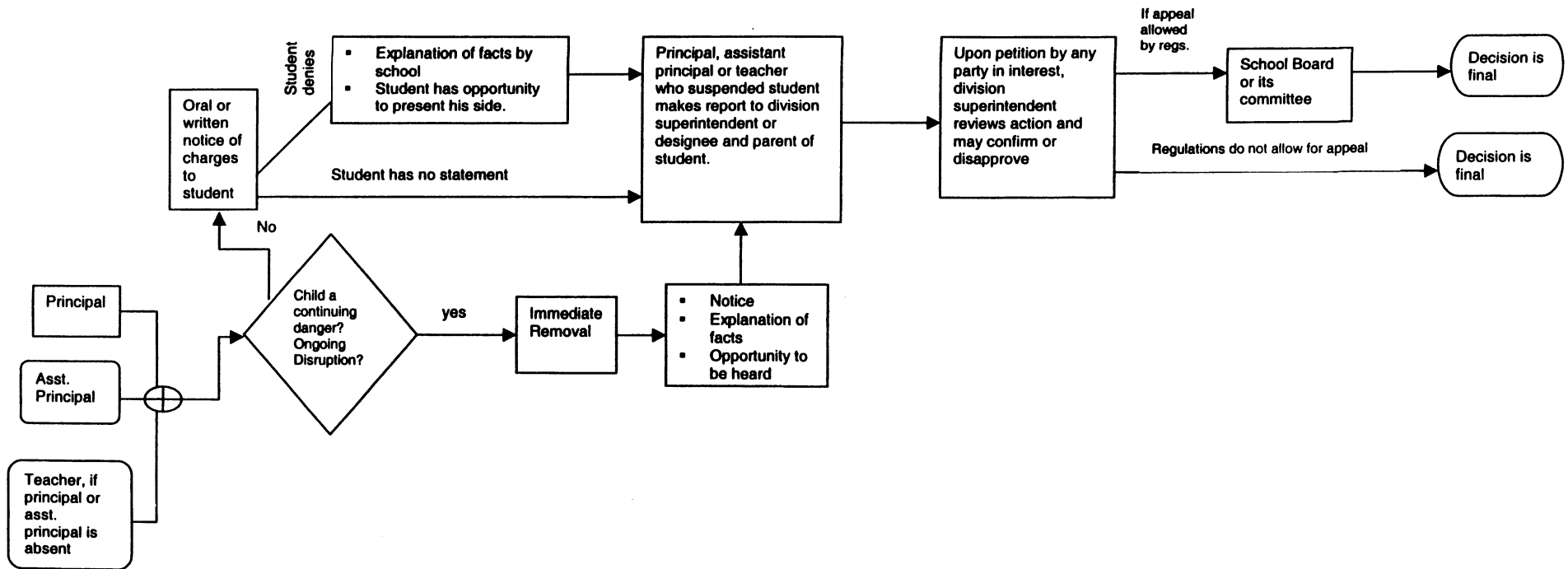
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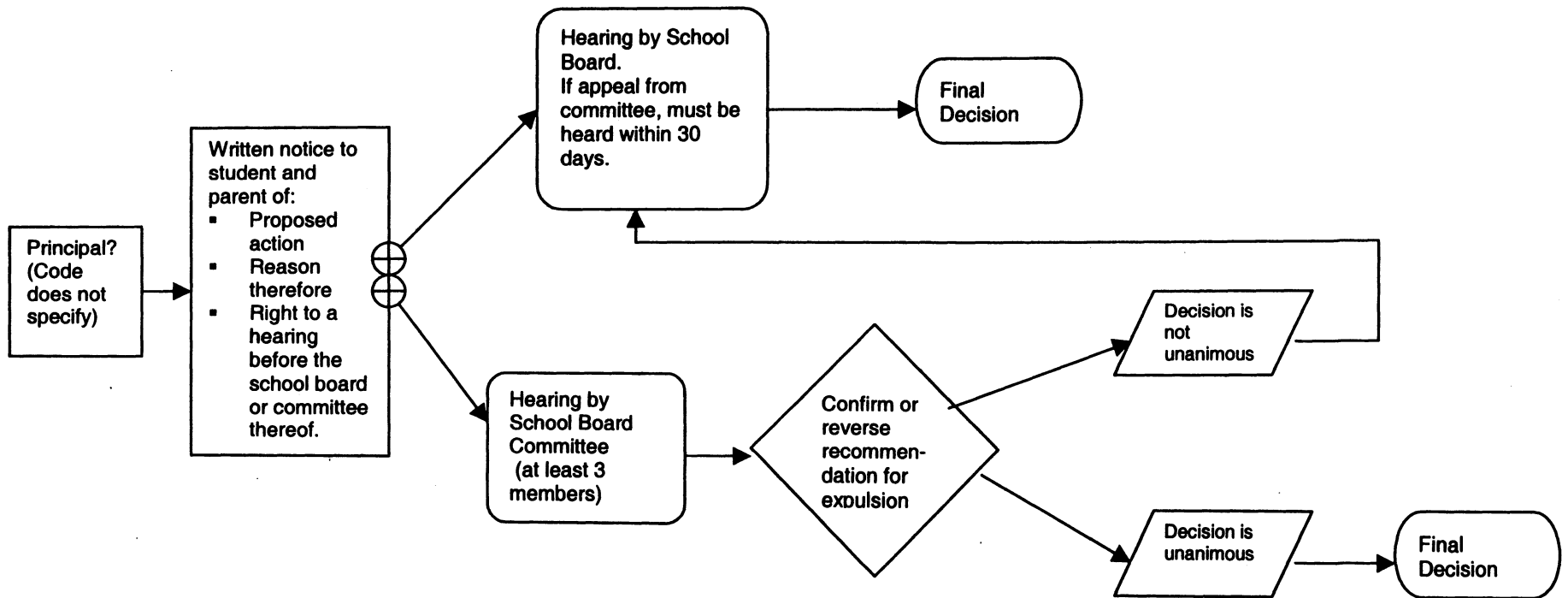
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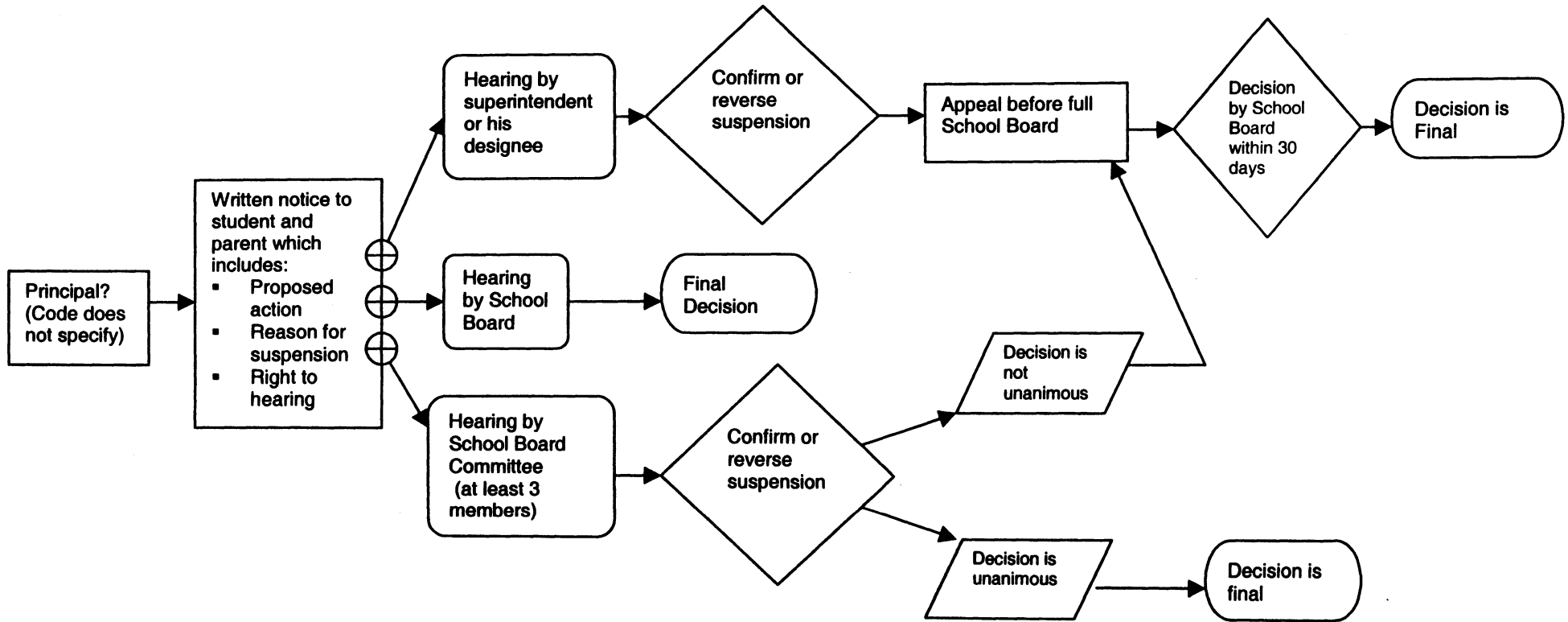
Virginia Code Section 22.1-277B Less Than Ten Day Suspension



Virginia Code Section 22.1-277D Expulsion



Virginia Code Section 22.1-277C Greater Than Ten Day Suspension



Appendix D

Local Student Codes of Conduct

	Standards and Expectations for Student Conduct	List of corrective actions available to the school administration for violation	Consequences determined on the basis of the facts of each case in the reasonable discretion of the Board and other appropriate school officials	General conditions which warrant expulsion/suspension	List of violations which may be grounds for suspension	List of the violations which may be grounds for suspension & expulsion	Provides a range of disciplinary measures for each of the Standards of Conduct	Specifies consequences for first and subsequent violations. May delineate for elementary and secondary students
Alexandria City	✓	✓		✓		✓		
Amherst County	✓	✓	✓					
Augusta County*								
Bland County	✓	✓					✓	
Brunswick County	✓							✓ - Notes that the administrator has the right to change the consequences cited in the handbook based on extenuating circumstances or prior disciplinary record.
Buena Vista City*								
Carroll County	✓	✓	✓ - Also will consider accumulative offenses by student		✓		✓	
Charlottesville City	✓	✓			✓			
Clarke County	✓	✓						✓
Covington City (grades 8-12)	✓		✓					✓ - For some offense
Cumberland County	✓	✓	✓					
Dinwiddie County (grades 6-12)	✓	✓		✓				

* Student Code of Conduct was requested but not received

Local Student Codes of Conduct

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Fairfax County	✓	✓		✓				✓ – Some disciplinary actions are required, others are permitted in the discretion of principal.
Floyd County	✓	✓	✓	✓				
Franklin County	✓				✓			✓
Galax City (high school)	✓	✓	✓		✓			✓
Goochland County	✓	✓	✓	✓		✓		
Greensville County	✓		✓ - Goes further by stating that the principal shall consider such factors as the nature & seriousness of the violation, student's age & maturity, previous disciplinary record and other relevant circumstances.			✓	✓	
Hanover County	✓	✓					✓ – Provides a maximum punishment for some offenses	✓ – Provides for mandatory suspension or expulsion for certain offenses. Where a consequence is required, a principal may seek a waiver.
Henry County	✓	✓	✓ - Severity of the infraction, age of the student, & repeated violations are to be considered.					
County of Wight	✓	✓	✓			✓		
King and Queen County	✓	✓	✓					

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Lexington City	✓	✓	✓					
Lunenburg County	✓							✓
Manassas City	✓			✓			✓ – For some offenses, a maximum penalty is set.	✓
Mathews County	✓	✓	✓					
Montgomery County (grades 6-12)	✓	✓	✓					
Newport News City	✓	✓					✓ – May differ by grade level	
Northumberland County	✓	✓	✓					
Orange County	✓	✓	✓					
Petersburg City	✓	✓					✓ – May differ by grade level	
Portsmouth City	✓	✓					✓ – May differ by grade level. Severity of offense determines the stage where intervention begins.	
Prince George County	✓	✓	✓					
Radford City	✓	✓	✓					
Richmond County	✓	✓	✓					
Rockbridge County*								
Roanoke City	✓	✓	✓	✓				

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Smyth County	✓	✓					✓ - <i>In determining the disposition, consideration should be given to circumstances of incident, student's previous records, age & development stage of child.</i>	
Stafford County	✓						✓	
Surry County	✓	✓					✓ - for a few of the major offenses, a recommendation for long-term suspension or expulsion is required.	
Virginia Beach City	✓	✓						
Waynesboro City	✓	✓	✓					
Williamsburg-James City County	✓	✓	✓					
Wythe County	✓	✓	✓					

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