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HOUSE BILL NO. 127

House Amendments in [] — February 1, 2022

A BILL to amend the Code of Virginia by adding a section numbered 22.1-26.2, relating to academic year Governor's Schools; certain practices prohibited [~~and~~ ,] permitted [, and required] .

Patron Prior to Engrossment—Delegate Davis

Referred to Committee on Education

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 22.1-26.2 as follows:

§ 22.1-26.2. Academic year Governor's Schools; certain practices prohibited [~~and~~ ,] permitted [, and required] .

A. As used in this section:

"Proxy discrimination" means the use of a facially neutral factor in student admissions that correlates with race, sex, color, ethnicity, or national origin for the purpose of discriminating against or granting a preference to any individual or group on the basis of race, sex, color, ethnicity, or national origin. "Proxy discrimination" includes the use of regional or feeder school caps, quotas, or bonuses, zip codes, other geographic or socioeconomic factors, and peer-group characteristics within feeder or other zoned schools, if such factors are used individually or in combination with other factors for the purpose of discriminating against or granting a preference to any individual or group on the basis of race, sex, color, ethnicity, or national origin.

"Traditional academic success factors" means the following student admissions factors: standardized test results that are not normed for different student groupings, academic grades and similar academic records, extracurricular activities and achievements that are relevant to success at a specialized school, and academic recommendations by teachers and other school officials.

B. No academic year Governor's School or governing board member, director, administrator, or employee thereof shall:

1. Discriminate against or grant preferential treatment to any individual or group on the basis of race, sex, color, ethnicity, or national origin;

2. Engage in proxy discrimination; or

3. Seek information on students' race, sex, color, ethnicity, or national origin during the application process for admission to such school unless expressly required by federal law, and to the extent it is required by federal law, such information shall be withheld to the maximum extent practicable from any individual involved in admissions decisions to the end that admissions decisions are blind as to the applicants' race, sex, color, ethnicity, and national origin.

C. In any cause of action in a court of competent jurisdiction to challenge an instance of proxy discrimination in violation of subdivision B 2, the plaintiff has the burden to establish a prima facie case of proxy discrimination through statements and other evidence, including statistical evidence, that a particular factor or combination of factors other than traditional academic success factors was selected at least in part for the purpose of discriminating against or granting a preference to any individual or group on the basis of race, sex, color, ethnicity, or national origin. To rebut such a prima facie case of proxy discrimination, the defendant has the burden to prove that the selection of the challenged factor or combination of factors was solely for a lawful purpose and not for the purpose of discriminating against or granting a preference to any individual or group on the basis of race, sex, color, ethnicity, or national origin.

D. Any academic year Governor's School or governing board member, director, administrator, or employee thereof may use traditional academic success factors and such use presumptively does not constitute proxy discrimination. In any cause of action in a court of competent jurisdiction to challenge the use of traditional academic success factors, the plaintiff has the burden to prove that the factors were manipulated, weighted, or otherwise used with the specific intent of discriminating against or granting a preference to an individual or group on the basis of race, sex, color, ethnicity, or national origin and not simply with knowledge that such use has or may have a disparate impact on such individual or group.

[E. Each local school board that jointly manages and controls a regional academic year Governor's school pursuant to § 22.1-26 shall collaborate to ensure that each public middle school that is eligible to send students to attend such Governor's school offers coursework, curriculum, and instruction that is comparable in content and in rigor in order to provide each student in each such middle school with the opportunity to gain admission to and excel academically at such Governor's school.]

ENGROSSED

HB127E