

SCHOOL of LAW

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DATE: December 20, 2022
RE: Expansion of the Virginia Literacy Act

INTRODUCTION:

In this memo, we propose the necessary elements for an expansion of the Virginia Literacy Act to fourth through eighth grades. To accomplish this, we first provide background information on how the Act has reformed K–3 literacy instruction, followed by research on the role of evidence-based literacy instruction in addressing literacy needs in fourth through eighth grades. We then (1) identify areas in the Virginia Code that are relevant in updating the Commonwealth’s approach to literacy in grades four through eight, and (2) make recommendations for the changes Virginia should consider adopting.

EXECUTIVE SUMMARY:

Local, state, and national data suggest that too many fourth through eighth grade students in Virginia are not proficient readers. Further, these data demonstrate that this problem disproportionately impacts Black, Hispanic, and economically disadvantaged students. Finally, as a November 2022 report of the Joint Legislative Audit and Review Commission (JLARC) highlights,¹ it is clear that the pandemic has exacerbated this literacy crisis. State data demonstrate that there is an unprecedented number of students in the upper primary and middle school grades who are below benchmark on foundational literacy skills.

Based on a review of the Virginia Code, recommendations from education experts, and suggestions from a range of education stakeholders in Virginia, we make the following recommendations to expand the scope of the VLA to support the literacy development of fourth through eighth graders:

¹ JLARC, 2022.

- Virginia should require local school boards to expand their program of evidence-based literacy instruction to include fourth through eighth grades, including core instruction in grades four and five and supplemental literacy instruction and intervention for students in grades four through eight who demonstrate need on a state-approved literacy screener;
- Virginia should require local school boards to provide professional development to middle school teachers to build their knowledge of evidence-based literacy instruction aligned with science-based reading research;
- Virginia should provide funding to local school boards to hire additional reading specialists at a ratio of 1:550 students for kindergarten through eighth grade; and
- Virginia should require the Department of Education (VDOE) to hire additional literacy coaches to support local school boards to implement evidence-based literacy instruction in grades four through eight.

PROBLEM STATEMENT:

Reading is the foundation of every child’s education. Failing to attain proficiency in literacy places a student at an increased risk for life-long adverse consequences, including dropping out of school, becoming incarcerated or unemployed, and experiencing mental health challenges.²

The Commonwealth, by passing the Virginia Literacy Act (VLA), has taken a significant step to ensure that all K–3 students in Virginia receive the core instruction and intervention services they need to become proficient readers.

Specifically, the VLA provides that:

- K–3 students receive evidence-based literacy instruction in their core classrooms, as well as supplemental instruction and intervention services if they perform below benchmark on the state-approved literacy screener;
- parents of K–3 students have access to evidence-based instructional materials to support their children’s literacy development at home and the opportunity to be involved in developing student reading plans, if their children require individualized intervention;
- elementary school teachers, special education teachers, reading specialists, and principals receive professional development in evidence-based literacy instruction and science-based reading research; and

² Hernandez, 2011.

- divisions develop literacy plans, have the resources to hire a reading specialist for each elementary school, and have the support to select evidence-based instructional materials that align with science-based reading research.

While the VLA has laid the groundwork for an effective system of early literacy instruction in Virginia, it alone is not sufficient to ensure that all students become proficient readers. Students continue to develop essential, foundational reading skills in fourth grade and beyond, and, for many students, their classroom performance does not reveal literacy difficulties until they reach upper elementary grades.³ Further, gains made in early literacy do not last without continued evidence-based instruction in later grades.⁴

The need for expanding the VLA through eighth grade is clear, and its urgency is highlighted in a November 2022 JLARC report on the Pandemic Impact on Public K-12 Education.⁵

- Recently released NAEP data⁶ reveal that only 32% of fourth graders performed at or above the proficient level in 2022, down from 38% in 2019 and 43% in 2017. This decline represents the greatest in the nation between 2019 and 2022, and Virginia dropped from 7th to 34th in the nation for fourth grade reading. Eighth graders are also increasingly underperforming, with only 31% of students at or above the proficient level in 2022, down from 33% in 2019 and 37% in 2017.
- The SOL data⁷ is equally bleak. In the 2018-2019 school year, 30% of third graders, 22% of fifth graders, and 24% of eighth graders failed the Reading SOL. The fail rate rose in the 2021-2022 school year, with 32% of third graders, 28% of fifth graders, and 28% of eighth graders failing.
- Results from the spring administration of the state’s early literacy screener, PALS,⁸ again demonstrate the urgency of this issue. Students who were in kindergarten through second grade between the 2019 and 2022 academic years are now screening below benchmark at historically high levels.⁹ Current second graders were hit the hardest with a below-benchmark rate of 35%, an 11-point increase from 24% in

³ Lubliner, 2004.

⁴ Johnson et al. (date accessed Nov. 11, 2022).

⁵ JLARC, 2022.

⁶ NAEP Data Explorer (date accessed Nov. 13, 2022).

⁷ Test Results Build-A-Table (date accessed Nov. 13, 2022).

⁸ Spring 2022 PALS Report (date accessed Nov. 13, 2022). The literacy screener assessment known as the Phonological Awareness Literacy Screener (PALS) is being renamed to the Virginia Language and Literacy Screener.

⁹ Twenty-eight percent of K–2 students screened below benchmark in 2022 compared to only 20% in 2019. Broken down by grade: in 2022, 21% of kindergarteners, 31% of first graders, and 35% of second graders screened below benchmark while in 2019, 14% of kindergarteners, 22% of first graders, and 24% of second graders did.

2019. When the VLA becomes effective in the fall of 2024, these students will be in the fourth grade and outside the reach of the VLA.

- Finally, these deficits in reading proficiency are even more pronounced for particular subgroups of students, soon to enter upper elementary and middle school grades. In the 2021-2022 school year, 47% of Black third graders and 49% of Hispanic third graders failed the Reading SOL. Economically disadvantaged students had a similarly high fail rate with 47% failing the assessment. Moreover, achievement gaps on PALS between white students and Black, Hispanic, economically disadvantaged, as well as ELL students all widened during the pandemic.

Unfortunately, Virginia is not well positioned to respond because:

- many schools are not implementing evidence-based core literacy curricula in fourth and fifth grades;
- middle school teachers lack knowledge about how to embed literacy instruction into core content classes; and
- students who demonstrate difficulties in reading in grades four through eight are not screened for literacy risk nor are they provided evidence-based supplemental instruction or intervention.

While intimidating, this problem is not insurmountable. It requires that Virginia build on the strong foundation that the VLA has established for K–3 literacy education and expand the provision of evidence-based literacy instruction to students in fourth through eighth grades.

The “Recommendations” section below outlines a two-pronged approach to ensure evidence-based core curricula, supplemental instruction, and intervention services for fourth through eighth graders and high-quality evidence-based professional development for middle school teachers and principals.

BACKGROUND:

How Science-Based Reading Research Should Inform Reading Assessment and Instruction.

Science-based reading research is a body of converging evidence, from multiple disciplines, that explains how proficient reading and writing develops, why some children have difficulties developing key literacy skills, and how educators can best assess and instruct reading. Instructional approaches to teaching reading should be aligned with this science and expansive evidence base. Evidence-based approaches in literacy instruction include explicit, systematic, and cumulative instruction in foundational reading skills (phonological and phonemic awareness, alphabetic principle, word reading and spelling) in tandem with

high quality oral language and vocabulary development, and background knowledge. Experts have known about the importance of using an evidence-based approach to literacy instruction for over 40 years, but many states are just beginning to make the necessary changes to implement these instructional practices in their classrooms.

About Early Intervention Reading Initiative (EIRI).

Virginia has one of the longest standing and most consistent systems for early identification and intervention of reading difficulties. The Early Intervention Reading Initiative (EIRI), established in 1997, is the system that guides Virginia’s approach to identifying K–3 at-risk readers and supports the provision of supplemental early reading instruction to these students. The purpose of the EIRI framework is to reduce the number of students with reading problems through early diagnosis and immediate intervention. Students who score below benchmark on the state-provided or approved early literacy screener receive a minimum of two and one-half hours of additional instruction each week at a student-to-teacher ratio of no more than five to one. Supplemental instruction for students who screen as at-risk is provided by a reading specialist or a reading tutor, generally outside the context of the child’s classroom setting. The VLA has guaranteed that EIRI services consist of evidence-based literacy instruction aligned with science-based reading research.

About the Virginia Language and Literacy Screener (PALS).

Screening for reading risk is an essential component of the EIRI system because it identifies students in need of intervention and provides critical information to know what type of intervention they require. The Virginia Language and Literacy Screener (currently called PALS) is provided at no cost to Virginia schools. This state-supported literacy screener is used in 131 of 132 school divisions to identify students needing individualized reading intervention services. The screener is currently being expanded to the third grade and updated for the first time since its inception over 20 years ago to be aligned with science-based reading research. It is expected to be ready for use across the Commonwealth in the fall of 2024.

The Role of Core Instruction in Fourth through Eighth Grades.

Core reading instruction has the potential to play a significant role in literacy development by preventing reading difficulties. The literature is very clear that in order for reading instruction provided by the classroom teacher to be effective at preventing reading difficulties, it must be grounded in science-based reading research and evidence-based practices. Evidence-based core curriculum can prevent students from unnecessarily falling below grade level and entering high school with deficient literacy skills.

Evidence-based literacy education in core K–3 classrooms is essential for building proficient readers, but it is not sufficient. There are still literacy challenges that arise in fourth through

eighth grades.¹⁰ Upper elementary students must master multisyllabic words and gain additional fluency skills.”¹¹ Thus, these students continue to need a “strong, coordinated, and comprehensive focus on literacy instruction.”¹² Middle school students can also benefit from literacy instruction integrated into core content-based classes. Students’ literacy skills can widely vary in strength and needs, and that can affect their ability to learn.¹³ When middle school teachers are trained to spot literacy problems, they can also better understand what students need in order to become proficient readers.¹⁴ This training, in conjunction with a coordinated school-wide literacy strategy, can be used to effectively support adolescents with reading difficulties.¹⁵

The Role of Literacy Intervention in Fourth through Eighth Grades.

Even with implementation of the VLA, there will continue to be students who enter the fourth grade in need of more support than the upper elementary core curricula can provide.¹⁶ Similarly, there will continue to be students who enter middle school with reading difficulties.¹⁷ These students may have difficulties learning to read for various reasons including comprehension, decoding, and fluency skills.¹⁸ Further, there exists a cohort of students who will need ongoing intervention services as part of a long-term literacy intervention process.¹⁹ These students may have had their reading difficulties identified earlier but need “continued intervention in later grades before they are able to successfully perform at grade-level benchmarks.”²⁰

DEFINITIONS:

The VLA codifies the following definitions for what constitutes science-based reading research and evidence-based literacy instruction.

¹⁰ There is well documented evidence to show that for low-income children there is a “fourth grade slump,” a sudden drop in reading scores, in response to the increased difficulty in reading materials. Wanzek et al., 2010. For example, upper elementary students are faced with the challenge of multi-syllabic words which can be an area where students begin to show reading difficulties. Kearns et al., 2014.

¹¹ Time to Act Report, 2010

¹² Johnson et al. (date accessed Nov. 11, 2022).

¹³ Time to Act Report, 2010.

¹⁴ Ofsted, 2022.

¹⁵ Ibid.

¹⁶ Wanzek, 2010 (finding that comprehension skills in fourth and fifth graders stand to be greatly improved by reading intervention).

¹⁷ Vaughn, 2012.

¹⁸ Johnson, et al. (date accessed Nov. 11, 2022).

¹⁹ Ibid.

²⁰ Ibid.

“Science-based reading research”: research that (i) applies rigorous, systematic, and objective observational or experimental procedures to obtain valid knowledge relevant to reading development, reading instruction, and reading and writing difficulties and (ii) explains how proficient reading and writing develop, why some children have difficulties developing key literacy skills, and how schools can best assess and instruct early literacy, including the use of evidence-based literacy instruction practices to promote reading and writing achievement.

“Evidence-based literacy instruction”: structured instructional practices, including sequential, systematic, explicit, and cumulative teaching, that (i) are based on reliable, trustworthy, and valid evidence consistent with science-based reading research; (ii) are used in core or general instruction, supplemental instruction, intervention services, and intensive intervention services; (iii) have a demonstrated record of success in adequately increasing students' reading competency, vocabulary, oral language, and comprehension and in building mastery of the foundational reading skills of phonological and phonemic awareness, alphabetic principle, phonics, spelling, and text reading fluency; and (iv) are able to be differentiated in order to meet the individual needs of students.

RECOMMENDATIONS:

Virginia should expand the VLA to ensure that fourth through eighth graders receive the evidence-based literacy instruction that they require to become proficient readers. More specifically, the Commonwealth should extend the evidence-based core curricula, screening measures, and intervention services required by the VLA through middle school to ensure that all students have the opportunity to enter high school as proficient readers.

We have designed our recommendations to support this expansion. For each recommendation, we describe its objectives and where in the Virginia Code change would be made to meet those objectives.

1. Evidence-Based Literacy Instruction

Objective:

Effective reading instruction begins with evidence-based core curricula and extends to individualized interventions that are aligned with science-based reading research. Core curriculum is as essential for upper elementary as it is for early elementary learners. It ensures that students continue to build proficiency throughout elementary school as the required reading becomes more difficult.

For some students, evidence-based core instruction will not be enough, and they will need supplemental instruction and intervention services. Currently, the Commonwealth's EIRI program identifies this high-risk group of students and provides individualized intervention services, but only through third grade. Expanding this intervention system through middle school ensures all students have the opportunity to enter high school with essential literacy skills.

Relevant Code Provisions: *Virginia Code sections: 22.1-253.13:1. Standard 1. Instruction programs supporting the Standards of Learning and other educational objectives; 22.1-253.13:6. Standard 6. Planning and public involvement.*

Proposed Policy Solutions:

1.1 *Local school boards to expand their programs of literacy instruction, to provide core instruction, supplemental instruction, and intensive intervention, as appropriate, that are evidence-based, aligned across instructional tiers, and grounded in science-based reading research to students in grades four through eight.*

Relevant Virginia Code section where amendments could be considered: § 22.1-253.13:1. Standard 1. Instruction programs supporting the Standards of Learning and other educational objectives.

1.2 *VBE to approve updated lists of evidence-based core curricula, supplemental instruction, and interventions for grades four through eight.*

Relevant Virginia Code section where amendments could be considered: § 22.1-253.13:1. Standard 1. Instruction programs supporting the Standards of Learning and other educational objectives.

1.3 *Local school boards to expand division literacy plans, required by § 22.1-253.13:6 (B), to include grades four through eight.*

1.3(a) VBE to update guidance on the contents of division literacy plans to include grades four through eight. Plans shall address how the district will align literacy professional development, core reading/literacy curriculum, screening, supplemental instruction, and interventions with evidence-based literacy practices grounded in the science-based reading research and how the district will support parents to support their children's literacy development.

1.3(b) VDOE to update the template for division literacy plans.

Relevant Virginia Code section where amendments could be considered: § 22.1-253:13:6. Standard 6. Planning and public involvement.

1.4 *Local school boards to expand their provision of EIRI intervention services to include students in grades four through eight.*

1.4(a) VDOE to develop literacy screeners for grades four through eight that local school boards will administer to students who are not proficient readers based on the spring Reading SOL in order to identify students who require intervention.

1.4(b) VBE to update guidance on the content of student reading plans for students in grades four through eight that shall include the student's specific reading skills deficiencies, goals and benchmarks, how progress will be monitored, the evidence-based literacy instruction that will be provided, and the strategies the student's parent can use to support that instruction.

1.4(c) VDOE to update the templates for student reading plans.

1.4(d) Local school boards to hire additional reading specialists at a ratio of 1:550 students for kindergarten through eighth grades.

Relevant Virginia Code sections where amendments could be considered: § 22.1-253.13:1. Standard 1. Instruction programs supporting the Standards of Learning and other educational objectives; and § 22.1-253.13:2. Standard 2. Instructional, administrative, and support personnel.

2. Professional Development

Objective:

To implement an effective program of literacy instruction through eighth grade, middle school educators, including principals and teachers, require a strong foundation in science-based reading research and evidence-based literacy instruction for adolescent students. Virginia should provide support, in the form of professional development and technical assistance, that develops teachers who can identify students who are having reading difficulties, understand the causes of those difficulties, and select and implement instructional strategies that enable students to build their literacy skills and access grade level content.

Relevant Code Provisions: *Virginia Code section 22.1-253.13:5. Standard 5. Quality of classroom instruction and educational leadership.*

Proposed Policy Solutions:

2.1 *VDOE to provide middle school literacy coaches to school divisions.*

Literacy coach support will include but is not limited to: (a) providing daily technical support to school-based reading specialists, coaches, and/or lead teachers in their capacity to support evidence-based literacy instruction, (b) modeling effective coaching and conferencing techniques, and (c) assisting administrators, school-based literacy/reading specialists, and teachers in developing and implementing an effective school-wide literacy plan.

Relevant Virginia Code section where amendments could be considered: § 22.1-253.13:5. Standard 5. Quality of classroom instruction and educational leadership.

2.2 *VBE to update guidance on high quality professional development in evidence-based literacy instruction grounded in science-based reading research to include approved lists of professional development programs for middle school educators.*

Relevant Virginia Code section where amendments could be considered: § 22.1-253.13:5. Standard 5. Quality of classroom instruction and educational leadership.

2.3 *VBE to require high quality professional development so that sixth through eighth ELA and ESL teachers become proficient in evidence-based literacy instruction and other sixth through eighth content teachers, as well as middle school principals, build awareness of evidence-based literacy instruction. The VDOE will define the proficiency and awareness standards.*

Relevant Virginia Code section where amendments could be considered: § 22.1-253.13:5. Standard 5. Quality of classroom instruction and educational leadership.

CONCLUSION AND NEXT STEPS:

As discussed above, Virginia’s passage of the VLA was a necessary, but not sufficient, step to ensure students in Virginia have the opportunity to become proficient readers. Without more, Virginia will not adequately address the literacy needs of students most impacted by the pandemic and will not provide critical support to upper elementary and middle school students. Expanding key elements of the VLA into fourth to eighth grade is a necessary next step.

APPENDIX:**Reading SOL Assessment Data**

Grade	Subgroup	2018-2019 Fail Rate (%)	2021-2022 Fail Rate (%)	Change
3	All	30	32	+2
	Black	43	47	+4
	Hispanic	45	49	+4
	Economically Disadvantaged	44	47	+3
5	All	22	28	+6
	Black	34	42	+8
	Hispanic	34	41	+7
	Economically Disadvantaged	34	42	+8
6	All	23	30	+7
	Black	36	46	+10
	Hispanic	34	44	+10
	Economically Disadvantaged	36	45	+9
8	All	24	28	+4
	Black	38	42	+4
	Hispanic	36	41	+5
	Economically Disadvantaged	39	43	+4

NAEP Assessment Data

Grade	Subgroup	2017 Proficient or Higher (%)	2019 Proficient or Higher (%)	2022 Proficient or Higher (%)	Change (2017 to 2022)
4	All	43	38	32	-11
	Black	21	19	17	-4
	Hispanic	29	26	16	-13
	Economically Disadvantaged ²¹	25	20	13	-12
8	All	37	33	31	-6
	Black	18	15	14	-4
	Hispanic	28	22	18	-10
	Economically Disadvantaged	19	18	14	-5

Virginia Language and Literacy Assessment Data

Grade	Subgroup	2019 Screened Below Benchmark (%)	2022 Screened Below Benchmark (%)	Change
K	All	14	21	+7
	Black	18	28	+10
	Hispanic	23	34	+11
	Economically Disadvantaged	20	29	+9
1	All	22	31	+9
	Black	30	42	+12
	Hispanic	32	46	+14
	Economically Disadvantaged	31	43	+12
2	All	24	35	+11
	Black	31	46	+15
	Hispanic	34	48	+14
	Economically Disadvantaged	33	46	+13

²¹ Approximated by students who qualify for free or reduced lunch

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