

VIRGINIA ACTS OF ASSEMBLY -- 2003 SESSION

CHAPTER 187

An Act to amend and reenact §§ 22.1-313 and 22.1-314 of the Code of Virginia, relating to timelines for decisions and appeals of teacher grievances.

[H 1790]

Approved March 16, 2003

Be it enacted by the General Assembly of Virginia:

1. That §§ 22.1-313 and 22.1-314 of the Code of Virginia are amended and reenacted as follows:

§ 22.1-313. Decision of school board; generally.

A. The school board shall retain its exclusive final authority over matters concerning employment and supervision of its personnel, including dismissals, suspensions and placing on probation.

B. In the case of a hearing before the school board, the school board shall give the teacher its written decision within ~~thirty~~ 30 days after the hearing. A record of the proceedings shall be taken and made available as provided in subsection I of § 22.1-312. Witnesses who are employees of the school board shall be granted release time if the hearing is held during the school day. The hearing shall be held at the school in which most witnesses work, if feasible. In the case of a hearing before a fact-finding panel, the school board shall give the teacher its written decision within ~~thirty~~ 30 days after the school board receives both the transcript of such hearing, if any, and the panel's findings of fact and recommendations; however, should there be a further hearing before the school board, as hereafter provided, such decision shall be furnished the teacher within ~~thirty~~ 30 days after such further hearing. The decision of the school board shall be reached after considering the transcript, if any, and the findings of fact and recommendations of the panel and such further evidence as the school board may receive at any further hearing.

C. A teacher may be dismissed, suspended or placed on probation by a majority of a quorum of the school board. In the event the school board's decision is at variance with the recommendations of the fact-finding panel, the school board shall be required to conduct an additional hearing which shall be public unless the teacher requests a private one. However, if the fact-finding hearing was held in private, the additional hearing shall be held in private. The hearing shall be conducted by the school board pursuant to subsection D of this section, except that the grievant and the division superintendent shall be allowed to appear, to be represented, and to give testimony. However, the additional hearing shall not include examination and cross-examination of any other witnesses. The school board's written decision shall include the rationale for the decision.

D. In any case in which a further hearing by a school board is held after a hearing before a fact-finding panel, the school board shall consider at such further hearing the transcript, if any, the findings and recommendations of the fact-finding panel and such further evidence, including that of witnesses having testified before the panel, as the school board deems appropriate or as may be offered on behalf of the grievant or the respondent. A school board may initiate any such hearing upon written notice to the teacher and the division superintendent within ~~ten~~ 10 business days after the board receives the findings of fact and recommendations of the panel and any transcript of any panel hearing. Such notice shall specify each matter to be inquired into by the school board. In any case in which a teacher may initiate any such hearing, the teacher shall request such hearing in writing within ~~ten~~ 10 business days after receiving the findings of fact and recommendations of the panel and any transcript of the panel hearing. Any decision by the school board shall be based solely on the transcript, if any, the findings of fact and recommendations of the panel, and any evidence relevant to the issues of the original grievance adduced at the hearing in the presence of each party. Such hearing shall be conducted as a hearing by the school board as provided in § 22.1-311.

E. The school board's attorney, assistants or representative, if he or they represented a participant in the prior proceedings, the grievant, the grievant's attorney or representative and, notwithstanding the provisions of § 22.1-69, the superintendent shall be excluded from any executive session of the school board which has as its purpose reaching a decision on a grievance. However, immediately after a decision has been made and publicly announced, as in favor of or not in favor of the grievant, the school board's attorney or representative and the superintendent may join the school board in executive session to assist in the writing of the decision.

§ 22.1-314. Decision of school board; issue of grievability; appeal.

Decisions regarding whether or not a matter is grievable shall be made by the school board at the request of the school division administration or grievant and such decision shall be made within ~~ten~~ 10 business days of such request. The school board shall reach its decision only after allowing the school division administration and the grievant opportunity to present written or oral arguments regarding grievability. The decision as to whether the arguments shall be written or oral shall be in the discretion

of the school board. Decisions of the school board may be appealed to the circuit court having jurisdiction in the school division for a hearing on the issue of grievability.

Proceedings for review of the decision of the school board shall be instituted by filing a notice of appeal with the school board within ~~ten~~ *10 business* days after the date of the decision and giving a copy thereof to all other parties. Within ~~ten~~ *10 business* days thereafter, the school board shall transmit to the clerk of the court to which the appeal is taken a copy of its decision, a copy of the notice of appeal, and the exhibits. The failure of the school board to transmit the record within the time allowed shall not prejudice the rights of the grievant. The court, on motion of the grievant, may issue a writ of certiorari requiring the school board to transmit the record on or before a certain date. Within ~~ten~~ *10 business* days of receipt by the clerk of such record, the court, sitting without a jury, shall hear the appeal on the record transmitted by the school board and such additional evidence as may be necessary to resolve any controversy as to the correctness of the record. The court, in its discretion, may receive such other evidence as the ends of justice require. The court may affirm the decision of the school board or may reverse or modify the decision. The decision of the court shall be rendered no later than the fifteenth day from the date of the conclusion of the hearing. Such determination of grievability shall be made subsequent to the reduction of the grievance to writing but prior to any panel or school board hearing or the right to such determination shall be deemed to have been waived.