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SENATE BILL NO. 145

Offered January 14, 2004

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A BILL to amend and reenact §§ 22.1-298, 22.1-309, 22.1-311, and 22.1-312 of the Code of Virginia, relating to hearings for teacher dismissal and licensure revocation.

 Patron—Cuccinelli

 Referred to Committee on Education and Health

Be it enacted by the General Assembly of Virginia:

1. That §§ 22.1-298, 22.1-309, 22.1-311, and 22.1-312 of the Code of Virginia are amended and reenacted as follows:

§ 22.1-298. Regulations governing licensure.

A. The Board of Education shall, by regulation, prescribe the requirements for licensure of teachers. *Such regulations shall include, among other things, provisions addressing the denial, suspension, revocation, renewal, and reinstatement of licenses. Such regulations shall establish procedures for the revocation of a teacher license upon receipt from a local school board of (i) a petition for such revocation and (ii) the record of the local school board hearing regarding such petition, conducted pursuant to Article 3 (§ 22.1-306 et seq.) of Chapter 15 of this title. The Superintendent of Public Instruction shall review and make recommendations regarding such petition and record, upon the request of the Board, and the Board shall make a final determination regarding such revocation within 60 days of receipt of the petition. Such regulations shall also set forth procedures for the Board to act directly in revoking a license.*

Regardless of the authority of any other agency of the Commonwealth to approve educational programs, only the Board of Education shall have the authority to license teachers to be regularly employed by school boards, including those teachers employed to provide nursing education.

B. Such regulations shall include requirements that:

1. Every teacher seeking initial licensure take a professional teacher's examination prescribed by the Board;

2. Persons seeking licensure on and after July 1, 2000, complete study in attention deficit disorder and gifted education, including the use of multiple criteria to identify gifted students;

3. Persons seeking initial licensure on and after July 1, 2002, complete study in, among other things, (i) methods of improving communication between schools and families; (ii) ways of increasing family involvement in student learning at home and in school; and (iii) the Standards of Learning;

4. Persons seeking licensure with endorsements as teachers of the blind and visually impaired on and after July 1, 2000, demonstrate proficiency in reading and writing Braille;

5. Persons seeking initial licensure on and after July 1, 2003, complete study in instructional methods tailored to promote student academic progress and effective preparation for the Standards of Learning end-of-course and end-of-grade assessments;

6. Persons seeking licensure renewal on and after July 1, 2004, receive training in instructional methods tailored to promote student academic progress and effective preparation for the Standards of Learning end-of-course and end-of-grade assessments;

7. On and after July 1, 2003, persons seeking initial licensure or license renewal as teachers demonstrate proficiency in the use of educational technology for instruction; and

8. On and after July 1, 2004, persons seeking initial licensure as teachers and persons seeking licensure renewal as teachers for the first time after such date complete study in child abuse recognition and intervention in accordance with curriculum guidelines developed by the Board of Education in consultation with the Department of Social Services that are relevant to the specific teacher licensure routes.

C. Notwithstanding any provision of law to the contrary, the Board may provide for the issuance of a provisional license, valid for a period not to exceed three years, to any person who does not meet the requirements of this section or any other requirement for licensure imposed by law.

D. The Board's licensure regulations shall also require that licensure for superintendents and principals, on and after July 1, 2000, be contingent upon acquiring the skills established in the Board's leadership standards.

E. Persons seeking initial licensure who graduate from Virginia institutions of higher education shall, on and after July 1, 2002, only be licensed as instructional personnel by the Board of Education if the endorsement areas offered at such institutions have been assessed by a national accrediting agency or by

59 a state approval process, with final accreditation by the Board of Education.

60 F. The Board shall prescribe a professional teacher's examination for administration by Virginia's
61 public institutions of higher education as provided in § 23-9.2:3.4 to persons seeking entry into teacher
62 education programs in such public institutions and shall establish a minimum passing score for such
63 examination. The examination shall be sufficiently rigorous and the minimum score set as necessary to
64 ensure that candidates have adequate academic and professional preparation to teach.

65 Candidates who fail to achieve the minimum score established by the Board shall not be denied
66 entrance into the relevant teacher education programs solely on the basis of such failure and shall have
67 the opportunity to address any deficiencies if enrolled in such program. Before completing any approved
68 teacher education program, candidates must achieve the minimum score on the test prescribed by the
69 Board.

70 The Board of Education, in consultation with the State Council of Higher Education, shall develop
71 guidelines for performance reports to be submitted by the public institutions of higher education
72 pursuant to § 23-9.2:3.4. Such reports shall include annual data on the pass rates, by institution, of
73 graduates of Virginia's institutions of higher education taking the state licensure examination and shall
74 not include any information identifying individual graduates.

75 G. The Board's licensure regulations shall also provide for licensure by reciprocity with comparable
76 endorsement areas for those individuals holding a valid out-of-state teaching license and national
77 certification from the National Board for Professional Teaching Standards or a nationally recognized
78 certification program approved by the Board of Education. The application for such individuals shall
79 require evidence of such valid licensure and national certification and shall not require official student
80 transcripts.

81 H. Notwithstanding the provisions of this section and the Board's authority to license teachers, local
82 school boards shall be authorized to issue valid three-year local eligibility licenses pursuant to
83 § 22.1-299.3.

84 I. Upon the expiration of a three-year local eligibility license, the holder of such license shall be
85 eligible, as appropriate for the degree issued to such person, for a collegiate professional license or a
86 postgraduate professional license to be issued by the Department of Education upon satisfaction of the
87 following conditions: (i) recommendation by the division superintendent and the school board for such
88 licensure; (ii) the completion of three successful years of teaching experience while holding a valid
89 three-year local eligibility license as certified by the division superintendent and school board; (iii)
90 achieving a satisfactory score on the professional teacher's examinations required by the Board; and (iv)
91 such standards as may be prescribed by the Board of Education.

92 J. As used in this section and the Board of Education's regulations for the licensure of school
93 personnel:

94 "Accredited institution" means an institution of higher education accredited by a national or regional
95 accrediting agency recognized by the United States Department of Education, or by a state approval
96 process.

97 § 22.1-309. Notice to teacher of recommendation of dismissal, license revocation, or placing on
98 probation; school board not to consider merits during notice; superintendent required to provide reasons
99 for recommendation upon request.

100 In the event a division superintendent determines to recommend (i) dismissal of any teacher, *which*
101 *recommendation may include a petition for license revocation*, or (ii) the placing on probation of a
102 teacher on continuing contract, written notice shall be sent to the teacher notifying him of the proposed
103 dismissal, *license revocation*, or placing on probation and informing him that within ~~fifteen~~15 days after
104 receiving the notice the teacher may request a hearing before the school board as provided in § 22.1-311
105 or before a fact-finding panel as provided in § 22.1-312. During such ~~fifteen~~15-day period and thereafter
106 until a hearing is held in accordance with the provisions herein, if one is requested by the teacher, the
107 merits of the recommendation of the division superintendent shall not be considered, discussed or acted
108 upon by the school board except as provided for herein. At the request of the teacher, the division
109 superintendent shall provide the reasons for the recommendation in writing or, if the teacher prefers, in a
110 personal interview. In the event a teacher requests a hearing pursuant to § 22.1-311 or § 22.1-312, the
111 division superintendent shall provide, within ~~ten~~10 days of the request, the teacher or his representative
112 with the opportunity to inspect and copy his personnel file and all other documents relied upon in
113 reaching the decision to recommend dismissal, *license revocation*, or probation. Within ~~ten~~10 days of the
114 request of the division superintendent, the teacher or his representative shall provide the division
115 superintendent with the opportunity to inspect and copy the documents to be offered in rebuttal to the
116 decision to recommend dismissal, *license revocation*, or probation. The division superintendent and the
117 teacher or his representative shall be under a continuing duty to disclose and produce any additional
118 documents identified later which may be used in the respective parties' cases-in-chief. The cost of
119 copying such documents shall be paid by the requesting party.

120 For the purposes of this section, "personnel file" shall mean any and all memoranda, entries or other

documents included in the teacher's file as maintained in the central school administration office or in any file on the teacher maintained within a school in which the teacher serves.

§ 22.1-311. Hearing before school board.

The hearing before the school board, which shall be private unless the teacher requests a public one, must be set within ~~thirty~~30 days of the request, and the teacher must be given at least ~~fifteen~~15 days' written notice of the time and place. At the hearing the teacher may appear with or without a representative and be heard, presenting testimony of witnesses and other evidence. *Recommendations for dismissal and any accompanying petition for license revocation shall be heard at a single hearing.*

§ 22.1-312. Hearing before fact-finding panel.

A. In the event that a hearing before a fact-finding panel is requested, a three-member panel shall be selected by the following method. The teacher shall select one panel member from among other employees of the school division. The division superintendent shall select one panel member from among employees of the school division. The teacher and the division superintendent shall select their respective panel members within five business days of any request for a hearing before a fact-finding panel. The two panel members so selected shall select the third impartial panel member.

If within five business days after both panel members have been selected they are unable to agree upon a third panel member, the chief judge of the circuit court shall be requested by the two members of the panel to furnish a list of five qualified and impartial fact finders, one of whom shall then be selected by the two members of the panel as the third member. The persons comprising the list may reside within or without the jurisdiction of the circuit court, be residents of the Commonwealth of Virginia and, in all cases, shall possess some knowledge and expertise in public education and education law and shall be deemed by the judge capable of presiding over an administrative hearing. Selection shall be made by the panel members alternately deleting any name from the list until only one remains. The panel member selected by the teacher shall make the first deletion. This selection process shall be completed within five business days after receipt of the list of fact finders from the chief judge. The third impartial panel member shall chair the panel. No elected official shall serve as a panel member. Panel members shall not be parties to, or witnesses to, the matter grieved.

With the agreement of the teacher's and division superintendent's panel members, the impartial panel member shall have the authority to conduct the hearing and make recommendations as set forth herein while acting as a hearing officer.

The Attorney General shall represent personally or through one of his assistants any third impartial panel member who shall be made a defendant in any civil action arising out of any matter connected with his duties as a panel member. If, in the opinion of the Attorney General, it is impracticable or uneconomical for such legal representation to be rendered by him or one of his assistants, he may employ special counsel for this purpose, whose compensation shall be fixed by the Attorney General and be paid out of the funds appropriated for the administration of the Department of Education.

B. The panel shall set the time for a hearing, which shall be held within 30 business days, and shall so notify the division superintendent and the teacher. The teacher and the division superintendent each may have present at the hearing and be represented at all stages by a representative or legal counsel. *Recommendations for dismissal and any accompanying petition for license revocation shall be heard at a single hearing before such panel.*

C. The panel shall determine the propriety of attendance at the hearing of persons not having a direct interest in the hearing; however, at the request of the teacher, the hearing shall be private.

D. The panel may ask, at the beginning of the hearing, for statements from the division superintendent and the teacher clarifying the issues involved.

The parties shall then present their claims and evidence. Witnesses may be questioned by the panel members, the teacher and the division superintendent. The panel may, at its discretion, vary this procedure but shall afford full and equal opportunity to all parties for presentation of any material or relevant evidence and shall afford the parties the right of cross-examination.

The parties shall produce such additional evidence as the panel may deem necessary to an understanding and determination of the dispute. The panel shall be the judge of relevancy and materiality of the evidence offered. All evidence shall be taken in the presence of the panel and of the parties.

E. Exhibits offered by the teacher or the division superintendent may be received in evidence by the panel and, when so received, shall be marked and made a part of the record.

F. The facts found and recommendations made by the panel shall be arrived at by a majority vote of the panel members.

G. The hearing may be reopened by the panel on its own motion or upon application of the teacher or the division superintendent for good cause shown to hear after-discovered evidence at any time before the panel's report is made.

H. The panel shall make a written report ~~which~~that shall include its findings of fact and

182 recommendations and shall file it with the members of the school board, the division superintendent and
183 the teacher, not later than 30 business days after the completion of the hearing.

184 I. A stenographic record or tape recording of the proceedings shall be taken. However, in
185 proceedings concerning grievances not related to dismissal or probation, the recording may be dispensed
186 with entirely by mutual consent of the parties. In such proceedings, if the recording is not dispensed
187 with, the two parties shall share the cost of the recording equally; if either party requests a transcript,
188 that party shall bear the expense of its preparation.

189 In cases of dismissal, *license revocation*, or probation, a record or recording of the proceedings shall
190 be made and preserved for a period of six months. If either the teacher or the school board requests that
191 a transcript of the record or recording be made at any time prior to expiration of the six-month period, it
192 shall be made and copies shall be furnished to both parties. The school board shall bear the expense of
193 the recording and the transcription.

194 J. The teacher shall bear his or her own expenses. The school board shall bear the expenses of the
195 division superintendent. The expenses of the panel shall be borne one-half by the school board and
196 one-half by the teacher.

197 K. The parties shall set the per diem rate of the panel. If the parties are unable to agree on the per
198 diem, it shall be fixed by the judge of the circuit court. No employee of the school division shall
199 receive such per diem for service on a panel during his normal work hours if he receives his normal
200 salary for the period of such service.

201 L. The recommendations and findings of fact of the panel submitted to the school board shall be
202 based exclusively upon the evidence presented to the panel at the hearing. No panel member shall
203 conduct an independent investigation involving the matter grieved.

204 M. Witnesses who are employees of the school board shall be granted release time if the hearing is
205 held during the school day. The hearing shall be held at the school in which most witnesses work, if
206 feasible.

207 N. For the purposes of this section, "business day" means any day that the relevant school board
208 office is open.