

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend and reenact §§ 22.1-311 and 22.1-312 of the Code of Virginia, relating to teacher licensure and dismissal.

[S 145]

Approved

Be it enacted by the General Assembly of Virginia:**1. That §§ 22.1-311 and 22.1-312 of the Code of Virginia are amended and reenacted as follows:****§ 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 days of the request, and the teacher must be given at least fifteen 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 witnesses. *The school board may hear a recommendation for dismissal and make a determination whether to make a recommendation to the Board of Education regarding the teacher's license at the same hearing or hold a separate hearing for each action.*

§ 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. *The panel may hear a recommendation for dismissal and make a determination whether to make a recommendation to the Board of Education regarding the teacher's license at the same hearing or hold a separate hearing for each action.*

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

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57 relevant evidence and shall afford the parties the right of cross-examination.

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

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

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

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

69 H. The panel shall make a written report which shall include its findings of fact and
70 recommendations and shall file it with the members of the school board, the division superintendent and
71 the teacher, not later than 30 business days after the completion of the hearing.

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

77 In cases of dismissal or probation, a record or recording of the proceedings shall be made and
78 preserved for a period of six months. If either the teacher or the school board requests that a transcript
79 of the record or recording be made at any time prior to expiration of the six-month period, it shall be
80 made and copies shall be furnished to both parties. The school board shall bear the expense of the
81 recording and the transcription.

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

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

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

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

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