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SENATE BILL NO. 980

Offered January 14, 2015

Prefiled January 11, 2015

A BILL to amend and reenact §§ 2.2-507, 22.1-298.1, 22.1-309, 22.1-311, and 22.1-313 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 22.1-312.1, relating to teacher grievance procedures.

 Patron—Favola

Referred to Committee on Education and Health

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-507, 22.1-309, 22.1-298.1, 22.1-311, and 22.1-313 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 22.1-312.1 as follows:

§ 2.2-507. Legal service in civil matters.

A. All legal service in civil matters for the Commonwealth, the Governor, and every state department, institution, division, commission, board, bureau, agency, entity, official, court, or judge, including the conduct of all civil litigation in which any of them are interested, shall be rendered and performed by the Attorney General, except as provided in this chapter and except for any litigation concerning a justice or judge initiated by the Judicial Inquiry and Review Commission. No regular counsel shall be employed for or by the Governor or any state department, institution, division, commission, board, bureau, agency, entity, or official. The Attorney General may represent personally or through one or more of his assistants any number of state departments, institutions, divisions, commissions, boards, bureaus, agencies, entities, officials, courts, or judges that are parties to the same transaction or that are parties in the same civil or administrative proceeding and may represent multiple interests within the same department, institution, division, commission, board, bureau, agency, or entity. The soil and water conservation district directors or districts may request legal advice from local, public, or private sources; however, upon request of the soil and water conservation district directors or districts, the Attorney General shall provide legal service in civil matters for such district directors or districts.

B. The Attorney General may represent personally or through one of his assistants any of the following persons who are made defendant in any civil action for damages arising out of any matter connected with their official duties:

1. Members, agents or employees of the Alcoholic Beverage Control Board;
2. Agents inspecting or investigators appointed by the State Corporation Commission;
3. Agents, investigators, or auditors employed by the Department of Taxation;
4. Members, agents or employees of the State Board of Behavioral Health and Developmental Services, the Department of Behavioral Health and Developmental Services, the State Board of Health, the State Department of Health, the Department of General Services, the State Board of Social Services, the Department of Social Services, the State Board of Corrections, the Department of Corrections, the State Board of Juvenile Justice, the Department of Juvenile Justice, the Virginia Parole Board, or the Department of Agriculture and Consumer Services;

5. Persons employed by the Commonwealth Transportation Board, the Department of Transportation, or the Department of Rail and Public Transportation;

6. Persons employed by the Commissioner of Motor Vehicles;

7. Persons appointed by the Commissioner of Marine Resources;

8. Police officers appointed by the Superintendent of State Police;

9. Conservation police officers appointed by the Department of Game and Inland Fisheries;

10. Hearing officers and third impartial panel members appointed to hear a teacher's grievance pursuant to § 22.1-311 or § 22.1-312.1;

11. Staff members or volunteers participating in a court-appointed special advocate program pursuant to Article 5 (§ 9.1-151 et seq.) of Chapter 1 of Title 9.1;

12. Any emergency medical service agency that is a licensee of the Department of Health in any civil matter and any guardian ad litem appointed by a court in a civil matter brought against him for alleged errors or omissions in the discharge of his court-appointed duties;

13. Conservation officers of the Department of Conservation and Recreation; or

14. A person appointed by written order of a circuit court judge to run an existing corporation or company as the judge's representative, when that person is acting in execution of a lawful order of the court and the order specifically refers to this section and appoints such person to serve as an agent of

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59 the Commonwealth.

60 Upon request of the affected individual, the Attorney General may represent personally or through
61 one of his assistants any basic or advanced emergency medical care attendant or technician possessing a
62 valid certificate issued by authority of the State Board of Health in any civil matter in which a defense
63 of immunity from liability is raised pursuant to § 8.01-225.

64 C. If, in the opinion of the Attorney General, it is impracticable or uneconomical for such legal
65 service to be rendered by him or one of his assistants, he may employ special counsel for this purpose,
66 whose compensation shall be fixed by the Attorney General. The compensation for such special counsel
67 shall be paid out of the funds appropriated for the administration of the board, commission, division or
68 department being represented or whose members, officers, inspectors, investigators, or other employees
69 are being represented pursuant to this section. Notwithstanding any provision of this section to the
70 contrary, the Supreme Court may employ its own counsel in any matter arising out of its official duties
71 in which it, or any justice, is a party.

72 **§ 22.1-298.1. Regulations governing licensure.**

73 A. As used in this section:

74 "Alternate route to licensure" means a nontraditional route to teacher licensure available to
75 individuals who meet the criteria specified in the regulations issued by the Board of Education.

76 "Industry certification credential" means a career and technical education credential that is earned by
77 successfully completing a Board of Education-approved industry certification examination, being issued a
78 state professional license, or successfully completing an occupational competency examination.

79 "Licensure by reciprocity" means a process used to issue a license to an individual coming into
80 Virginia from another state when that individual meets certain conditions specified in the Board of
81 Education's regulations.

82 "Professional teacher's assessment" means those tests mandated for licensure as prescribed by the
83 Board of Education.

84 "Provisional license" means a nonrenewable license issued by the Board of Education for a specified
85 period of time, not to exceed three years, to an individual who may be employed by a school division in
86 Virginia and who generally meets the requirements specified in the Board of Education's regulations for
87 licensure, but who may need to take additional coursework or pass additional assessments to be fully
88 licensed with a renewable license.

89 "Renewable license" means a license issued by the Board of Education for five years to an individual
90 who meets the requirements specified in the Board of Education's regulations.

91 B. The Board of Education shall prescribe, by regulation, the requirements for the licensure of
92 teachers and other school personnel required to hold a license. Such regulations shall include
93 requirements for the denial, suspension, cancellation, revocation, and reinstatement of licensure. The
94 Board of Education shall revoke the license of any person for whom it has received a notice of
95 dismissal or resignation pursuant to subsection F G of § 22.1-313 and, in the case of a person who is
96 the subject of a founded complaint of child abuse or neglect, after all rights to any appeal provided by
97 § 63.2-1526 have been exhausted. Regardless of the authority of any other agency of the Commonwealth
98 to approve educational programs, only the Board of Education shall have the authority to license
99 teachers to be regularly employed by school boards, including those teachers employed to provide
100 nursing education.

101 The Board of Education shall prescribe by regulation the licensure requirements for teachers who
102 teach only online courses, as defined in § 22.1-212.23. Such license shall be valid only for teaching
103 online courses. Teachers who hold a five-year renewable license issued by the Board of Education may
104 teach online courses for which they are properly endorsed.

105 C. The Board of Education's regulations shall include requirements that a person seeking initial
106 licensure:

- 107 1. Complete professional assessments as prescribed by the Board of Education;
- 108 2. Complete study in attention deficit disorder;
- 109 3. Complete study in gifted education, including the use of multiple criteria to identify gifted
110 students; and
- 111 4. Complete study in methods of improving communication between schools and families and ways
112 of increasing family involvement in student learning at home and at school.

113 D. In addition, such regulations shall include requirements that:

- 114 1. Every person seeking initial licensure or renewal of a license demonstrate proficiency in the use of
115 educational technology for instruction;
- 116 2. Every person seeking initial licensure and persons seeking licensure renewal as teachers who have
117 not completed such study shall complete study in child abuse recognition and intervention in accordance
118 with curriculum guidelines developed by the Board of Education in consultation with the Department of
119 Social Services that are relevant to the specific teacher licensure routes;
- 120 3. Every person seeking initial licensure or renewal of a license shall receive professional

development 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;

4. Every person seeking initial licensure or renewal of a license shall provide evidence of completion of certification or training in emergency first aid, cardiopulmonary resuscitation, and the use of automated external defibrillators. The certification or training program shall be based on the current national evidence-based emergency cardiovascular care guidelines for cardiopulmonary resuscitation and the use of an automated external defibrillator, such as a program developed by the American Heart Association or the American Red Cross. The Board shall provide a waiver for this requirement for any person with a disability whose disability prohibits such person from completing the certification or training;

5. Every person seeking licensure with an endorsement as a teacher of the blind and visually impaired shall demonstrate proficiency in reading and writing Braille; and

6. Every teacher seeking initial licensure with an endorsement in the area of career and technical education shall have an industry certification credential in the area in which the teacher seeks endorsement.

E. The Board's regulations shall require that initial licensure for principals and assistant principals be contingent upon passage of an assessment as prescribed by the Board.

F. The Board shall establish criteria in its regulations to effectuate the substitution of experiential learning for coursework for those persons seeking initial licensure through an alternate route as defined in Board regulations.

G. 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.

H. The Board's licensure regulations shall also provide for licensure by reciprocity:

1. With comparable endorsement areas for those individuals holding a valid out-of-state teaching license and national certification from the National Board for Professional Teaching Standards or a nationally recognized certification program approved by the Board of Education. The application for such individuals shall require evidence of such valid licensure and national certification and shall not require official student transcripts;

2. For individuals who have obtained a valid out-of-state license, with full credentials and without deficiencies, that is in force at the time the application for a Virginia license is received by the Department of Education. The individual must establish a file in the Department of Education by submitting a complete application packet, which shall include official student transcripts. An assessment of basic skills as provided in § 22.1-298.2 and service requirements shall not be imposed for these licensed individuals; however, other licensing assessments, as prescribed by the Board of Education, shall be required; and

3. The Board may include other provisions for reciprocity in its regulations.

§ 22.1-309. Notice to teacher of recommendation of dismissal; school board not to consider merits during notice; superintendent required to provide reasons for recommendation upon request.

In the event a division superintendent determines to recommend dismissal of any teacher, written notice shall be sent to the teacher notifying him of the proposed dismissal and informing him that within 10 business days after receiving the notice the teacher may request a hearing before (i) the school board or, at the option of the local school board, a hearing officer appointed by the school board as provided in § 22.1-311 or (ii) a fact-finding panel as provided in § 22.1-312.1. During such 10-business-day period and thereafter until a hearing is held in accordance with the provisions of this section, if one is requested by the teacher, the merits of the recommendation of the division superintendent shall not be considered, discussed or acted upon by the school board except as provided for in this section. At the request of the teacher, the division superintendent shall provide the reasons for the recommendation in writing or, if the teacher prefers, in a personal interview. In the event a teacher requests a hearing pursuant to § 22.1-311 or 22.1-312.1, the division superintendent shall provide, within 10 days of the request, the teacher or his representative with the opportunity to inspect and copy his personnel file and all other documents relied upon in reaching the decision to recommend dismissal. Within 10 days of the request of the division superintendent, the teacher or his representative shall provide the division superintendent with the opportunity to inspect and copy the documents to be offered in rebuttal to the decision to recommend dismissal. The division superintendent and the teacher or his representative shall be under a continuing duty to disclose and produce any additional documents identified later which may be used in the respective parties' cases-in-chief. The cost of copying such documents shall be paid by the requesting party.

For the purposes of this section, "personnel file" means 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 or hearing officer.

A. Upon a timely request for a hearing, *other than a request for a hearing before a fact-finding panel*, pursuant to § 22.1-309, the school board or, at the option of the school board, a hearing officer appointed by the school board shall set a hearing within 15 days of the request and the teacher shall be given at least five days' written notice of the time and the place. The hearing shall be private unless the teacher requests the hearing to be public. At the hearing the teacher may appear with or without a representative and be heard, presenting testimony of witnesses and other evidence. 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.

B. Each school board may appoint an impartial hearing officer from outside the school division to conduct hearings pursuant to this section. A hearing officer shall not have been involved in the recommendation of dismissal as a witness or a representative. A hearing officer shall possess some knowledge and expertise in public education and education law and be capable of presiding over an administrative hearing. The hearing officer shall schedule and preside over such hearings and shall create a record or recording of such proceedings. The hearing officer shall make a written recommendation to the school board, a copy of which shall be provided to the teacher. The hearing officer shall transmit the recommendation and the record or recording of the hearing to the school board as soon as practicable and no more than 10 business days after the hearing. In the event of a hearing before a hearing officer, the school board may make its decision upon the record or recording of such hearing, pursuant to § 22.1-313, or the school board may elect to conduct a further hearing to receive additional evidence by giving written notice of the time and place to the teacher and the division superintendent within 10 business days after the board receives the record or recording of the initial hearing. Such notice shall also specify each matter to be inquired into by the school board.

C. A record or recording of any hearing conducted pursuant to this section shall be made. The parties shall share the cost of the recording equally. In proceedings concerning grievances not related to dismissal, the recording may be dispensed with entirely by mutual consent of the parties. In such proceedings, if the recording is not dispensed with, the two parties shall share the cost of the recording equally; if either party requests a transcript, that party shall bear the expense of its preparation. In cases of dismissal, the record or recording shall be preserved for a period of six months. If the school board requests that a transcript be made at any time prior to expiration of the six-month period, it shall be made and copies shall be furnished to both parties. The school board shall bear the cost of the transcription.

D. 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.

§ 22.1-312.1. Hearing before fact-finding panel.

A. *In the event that a hearing before a fact-finding panel is requested pursuant to § 22.1-309, 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 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, shall be residents of the Commonwealth 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 by 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 in this section 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 teacher and the division superintendent. 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 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 shall include its findings of fact and recommendations, and shall file it with the members of the school board, the division superintendent, and the teacher not later than 30 business days after the completion of the hearing.

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

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

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

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

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

M. 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.

§ 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 and suspensions.

B. In the case of a hearing before the school board, the school board shall give the teacher its written decision as soon as practicable and no more than 30 days after the hearing.

C. In the case of a hearing before a hearing officer appointed by the school board or a fact-finding panel, the school board shall give the teacher its written decision as soon as practicable and no more

305 than 30 days after receiving the record or recording of the hearing; however, should there be a further
306 hearing before the school board, such decision shall be furnished the teacher as soon as practicable and
307 no more than 30 days after such further hearing.

308 D. A teacher may be dismissed or suspended by a majority of a quorum of the school board. *In the*
309 *event the school board's decision is at variance with the recommendations of the fact-finding panel, the*
310 *school board shall be required to conduct an additional hearing, which shall be public unless the*
311 *teacher requests a private one. However, if the initial hearing was held in private, the additional*
312 *hearing shall also be held in private. The hearing shall be conducted by the school board pursuant to*
313 *subsection E, except that the grievant and the division superintendent shall be allowed to appear, to be*
314 *represented, and to give testimony. However, the additional hearing shall not include examination and*
315 *cross-examination of any other witnesses. The school board's written decision shall include the rationale*
316 *for the decision.*

317 E. *In any case in which a further hearing by the school board is held after a hearing before a*
318 *fact-finding panel, the school board shall consider at such further hearing the transcript, if any, the*
319 *findings and recommendations of the fact-finding panel, and such further evidence, including that of*
320 *witnesses having testified before the panel, as the school board deems appropriate or as may be offered*
321 *on behalf of the grievant or the respondent. The school board may initiate any such hearing upon*
322 *written notice to the teacher and the division superintendent within 10 business days after the board*
323 *receives the findings of fact and recommendations of the panel and any transcript of any panel hearing.*
324 *Such notice shall specify each matter to be inquired into by the school board. In any case in which a*
325 *teacher may initiate any such hearing, the teacher shall request such hearing in writing within 10*
326 *business days after receiving the findings of fact and recommendations of the panel and any transcript*
327 *of the panel hearing. Any decision by the school board shall be based solely on the transcript, if any,*
328 *the findings of fact and recommendations of the panel, and any evidence relevant to the issues of the*
329 *original grievance adduced at the hearing in the presence of each party. Such hearing shall be*
330 *conducted as a hearing by the school board as provided in § 22.1-311, however, the school board shall*
331 *not have the option of utilizing a hearing officer.*

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

339 F. G. In those instances when licensed personnel are dismissed or resign due to a conviction of any
340 felony, any offense involving the sexual molestation, physical or sexual abuse or rape of a child, any
341 offense involving drugs, or due to having become the subject of a founded case of child abuse or
342 neglect, the local school board shall notify the Board of Education within 10 business days of such
343 dismissal or the acceptance of such resignation.