

VIRGINIA ACTS OF ASSEMBLY -- 2020 SESSION

CHAPTER 875

An Act to amend and reenact §§ 22.1-311 and 22.1-313 of the Code of Virginia, relating to teacher grievance procedures; hearing; three-member fact-finding panel.

[S 377]

Approved April 8, 2020

Be it enacted by the General Assembly of Virginia:

1. That §§ 22.1-311 and 22.1-313 of the Code of Virginia are amended and reenacted as follows:

§ 22.1-311. Hearing before school board, hearing officer, or fact-finding panel.

A. Upon a timely request for a hearing pursuant to § 22.1-309, the school board or, at the option of the school board, a hearing officer appointed by the school board *or a three-member fact-finding panel* shall set a hearing ~~within 45 days of the request~~ and the teacher shall be given at least ~~five~~ 10 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. *Each school board may elect for a three-member fact-finding panel to conduct hearings pursuant to this section. The teacher and the division superintendent shall each select one panel member, and the two panel members so selected shall select an impartial hearing officer to serve as the chairman of the panel. The fact-finding panel shall schedule and preside over such hearings and shall create a record or recording of such proceedings. The fact-finding panel shall make a written recommendation to the school board, a copy of which shall be provided to the teacher. The fact-finding panel shall transmit the recommendation and the record or recording of the hearing to the school board as soon as practicable but in no case more than 10 business days after the hearing. In the event of a hearing before a fact-finding panel, 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 of the hearing 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.*

D. 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.~~ E. 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~~ *but in no case* 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 three-member fact-finding panel*, the school board shall give the teacher its written decision as soon as practicable ~~and~~ *but in no case* more than 30 days after receiving the record or recording of the hearing; however, should there be a further hearing before the school board, such decision shall be furnished the teacher as soon as practicable ~~and~~ *but in no case* more than 30 days after such further hearing.

D. A teacher may be dismissed or suspended by a majority of a quorum of the school board.

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.

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