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SENATE BILL NO. 178

Offered January 12, 2022

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A BILL to amend and reenact §§ 22.1-303, 22.1-307, 22.1-311, and 22.1-313 of the Code of Virginia, relating to public school teachers; probationary term of service, grounds for dismissal, and dismissal hearings.

Patron—Peake

Referred to Committee on Education and Health

Be it enacted by the General Assembly of Virginia:

1. That §§ 22.1-303, 22.1-307, 22.1-311, and 22.1-313 of the Code of Virginia are amended and reenacted as follows:

§ 22.1-303. Probationary terms of service for teachers.

A. A probationary term of service of at least three years and, at the option of the local school board, up to five years in the same school division shall be required before a teacher is issued a continuing contract. School boards shall provide each probationary teacher except probationary teachers who have prior successful teaching experience, as determined by the local school board in a school division, a mentor teacher, as described by Board guidelines developed pursuant to § 22.1-305.1, during the first year of the probationary period, to assist such probationary teacher in achieving excellence in instruction. During the probationary period, such probationary teacher shall be evaluated annually based upon the evaluation procedures developed by the employing school board for use by the division superintendent and principals in evaluating teachers as required by subsection C of § 22.1-295. A teacher in his first year of the probationary period shall be evaluated informally at least once during the first semester of the school year. The division superintendent shall consider such evaluations, among other things, in making any recommendations to the school board regarding the nonrenewal of such probationary teacher's contract as provided in § 22.1-305.

If the teacher's performance evaluation during the probationary period is not satisfactory, the school board shall not reemploy the teacher; however, nothing contained in this subsection shall be construed to require cause, as defined in § 22.1-307, for the nonrenewal of the contract of a teacher who has not achieved continuing contract status.

Any teacher hired on or after July 1, 2001, shall be required, as a condition of achieving continuing contract status, to have successfully completed training in instructional strategies and techniques for intervention for or remediation of students who fail or are at risk of failing the Standards of Learning assessments. Local school divisions shall be required to provide said training at no cost to teachers employed in their division. In the event a local school division fails to offer said training in a timely manner, no teacher will be denied continuing contract status for failure to obtain such training.

B. Once a continuing contract status has been attained in a school division in the Commonwealth, another probationary period need not be served in any other school division unless such probationary period, not to exceed two years, is made a part of the contract of employment. Further, when a teacher has attained continuing contract status in a school division in the Commonwealth and separates from and returns to teaching service in a school division in Virginia by the beginning of the third year, such teacher shall be required to serve a probationary period not to exceed two years, if made a part of the contract for employment.

C. For the purpose of calculating the years of service required to attain continuing contract status, at least 160 contractual teaching days during the school year shall be deemed the equivalent of one year in the first year of service by a teacher.

D. Teachers holding three-year local eligibility licenses issued prior to July 1, 2013, shall not be eligible for continuing contract status while teaching under the authority of such license. Upon attainment of a collegiate professional or postgraduate professional license issued by the Department of Education, such teachers shall serve a probationary term of service of three years prior to being eligible for continuing contract status pursuant to this section.

§ 22.1-307. Dismissal of teacher; grounds.

A. As used in this section, "incompetency" may be construed to include consistent failure to meet the endorsement requirements for the position or one or more unsatisfactory performance evaluations.

B. Teachers may be dismissed for incompetency, immorality, noncompliance with school laws and regulations, disability as shown by competent medical evidence when in compliance with federal law, conviction of a felony or a crime of moral turpitude, or other good and just cause. A teacher shall be

59 dismissed if such teacher is or becomes the subject of a founded complaint of child abuse and neglect,  
60 pursuant to § 63.2-1505, and after all rights to any administrative appeal provided by § 63.2-1526 have  
61 been exhausted. The fact of such finding, after all rights to any administrative appeal provided by  
62 § 63.2-1526 have been exhausted, shall be grounds for the local school division to recommend that the  
63 Board of Education revoke such person's license to teach. No teacher shall be dismissed or placed on  
64 probation solely on the basis of the teacher's refusal to submit to a polygraph examination requested by  
65 the school board.

66 **§ 22.1-311. Hearing before school board or hearing officer.**

67 A. Upon a timely request for a hearing pursuant to § 22.1-309, the school board or, at the option of  
68 the school board, a hearing officer appointed by the school board or a ~~three-member fact-finding panel~~  
69 shall set a hearing *no later than 15 days after the request* and the teacher shall be given at least ~~10~~ *five*  
70 days' written notice of the time and the place. The hearing shall be private unless the teacher requests  
71 the hearing to be public. At the hearing the teacher may appear with or without a representative and be  
72 heard, presenting testimony of witnesses and other evidence. The school board may hear a  
73 recommendation for dismissal and make a determination whether to make a recommendation to the  
74 Board of Education regarding the teacher's license at the same hearing or hold a separate hearing for  
75 each action.

76 B. Each school board may appoint an impartial hearing officer from outside the school division to  
77 conduct hearings pursuant to this section. A hearing officer shall not have been involved in the  
78 recommendation of dismissal as a witness or a representative. A hearing officer shall possess some  
79 knowledge and expertise in public education and education law and be capable of presiding over an  
80 administrative hearing. The hearing officer shall schedule and preside over such hearings and shall create  
81 a record or recording of such proceedings. The hearing officer shall make a written recommendation to  
82 the school board, a copy of which shall be provided to the teacher. The hearing officer shall transmit the  
83 recommendation and the record or recording of the hearing to the school board as soon as practicable  
84 and no more than 10 business days after the hearing. In the event of a hearing before a hearing officer,  
85 the school board may make its decision upon the record or recording of such hearing, pursuant to  
86 § 22.1-313, or the school board may elect to conduct a further hearing to receive additional evidence by  
87 giving written notice of the time and place to the teacher and the division superintendent within 10  
88 business days after the board receives the record or recording of the initial hearing. Such notice shall  
89 also specify each matter to be inquired into by the school board.

90 C. Each school board may elect for a ~~three-member fact-finding panel to conduct hearings pursuant~~  
91 ~~to this section. The teacher and the division superintendent shall each select one panel member, and the~~  
92 ~~two panel members so selected shall select an impartial hearing officer to serve as the chairman of the~~  
93 ~~panel. The fact-finding panel shall schedule and preside over such hearings and shall create a record or~~  
94 ~~recording of such proceedings. The fact-finding panel shall make a written recommendation to the~~  
95 ~~school board, a copy of which shall be provided to the teacher. The fact-finding panel shall transmit the~~  
96 ~~recommendation and the record or recording of the hearing to the school board as soon as practicable~~  
97 ~~but in no case more than 10 business days after the hearing. In the event of a hearing before a~~  
98 ~~fact-finding panel, the school board may make its decision upon the record or recording of such hearing,~~  
99 ~~pursuant to § 22.1-313, or the school board may elect to conduct a further hearing to receive additional~~  
100 ~~evidence by giving written notice of the time and place of the hearing to the teacher and the division~~  
101 ~~superintendent within 10 business days after the board receives the record or recording of the initial~~  
102 ~~hearing. Such notice shall also specify each matter to be inquired into by the school board.~~

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

112 ~~E.~~ *D.* Witnesses who are employees of the school board shall be granted release time if the hearing  
113 is held during the school day. The hearing shall be held at the school in which most witnesses work, if  
114 feasible.

115 **§ 22.1-313. Decision of school board; generally.**

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

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

120 C. In the case of a hearing before a hearing officer appointed by the school board or a ~~three-member~~

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

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

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

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