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HOUSE BILL NO. 1386

Offered January 25, 1994

A BILL to amend and reenact §§ 19.2-83.1, 22.1-308 and 22.1-315 of the Code of Virginia, relating to notification of arrest of school employees, and grounds and procedure for suspension.

Patrons—Christian, Behm and Crittenden; Senators: Andrews and Maxwell

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 19.2-83.1, 22.1-308 and 22.1-315 of the Code of Virginia are amended and reenacted as follows:

§ 19.2-83.1. Report of arrest of certain school employees for certain offenses.

Every state official or agency and every sheriff, police officer, or other local law-enforcement officer or conservator of the peace having the power to arrest for a felony, upon arresting a person who is known or discovered by the arresting official to be a teacher or employee in any public school division in this Commonwealth for any *felony, crime involving moral turpitude, or* offense involving the sexual molestation, physical or sexual abuse, or rape of a child, shall file a report of such arrest with the local school division superintendent as soon as reasonably practical. The contents of the report required pursuant to this section shall be utilized by the local school division solely to implement the provisions of § 22.1-315.

§ 22.1-308. Grievance procedure.

A. The Board of Education shall prescribe a grievance procedure which shall include the following:

1. Except in the case of dismissal or placing on probation, a first step which shall provide for an informal, initial processing of a grievance by the most immediate appropriate supervisor through a discussion;

2. A requirement that all stages of the grievance beyond the first step be in writing on forms prescribed by the Board of Education and supplied by the school board;

3. A requirement that in reducing the grievance to writing, the ~~teacher~~ *employee* shall specify the specific relief sought through the use of the procedure;

4. The right of the grievant and the respondent to present appropriate witnesses and be represented by legal counsel and another representative;

5. Reasonable time limitations, prescribed by the Board, for the grievant to submit an initial complaint and to appeal each decision through the steps of the grievance procedure which shall correspond generally or be equivalent to the time prescribed for response at each step;

6. Termination of the right of the grievant to further appeal upon failure of the grievant to comply with all substantial procedural requirements of the grievance procedure without just cause;

7. The right of the grievant, at his option, upon failure of the respondent to comply with all substantial procedural requirements without just cause, to advancement to the next step or, in the final step, to a decision in his favor;

8. A final step which shall provide for a final decision on the grievance by the school board;

9. The provisions of §§ 22.1-309 through 22.1-313.

B. Representatives referred to in subsection A 4 of this section may examine, cross-examine, question and present evidence on behalf of a grievant or respondent in the grievance procedure without being in violation of the provisions of § 54.1-3904.

C. Nothing in the procedure shall be construed to restrict any ~~teacher's~~ *employee's* right to seek or a school division administration's right to provide customary review of complaints that are not included within the definition of a grievance.

§ 22.1-315. Notice of arrest of school employees; grounds and procedure for suspension.

A. A ~~teacher~~ *school board employee* may be suspended for good and just cause when the safety or welfare of the school division or the students therein is threatened or when, *upon the notification of arrest as provided in § 19.2-83.1,* the ~~teacher~~ *employee* has been charged by summons, warrant, indictment or information with the commission of a felony, a crime of moral turpitude or any offense involving the sexual molestation, physical or sexual abuse, or rape of a child. Except when a ~~teacher~~ *an employee* is suspended because of being charged by summons, warrant, indictment or information with the commission of a felony or a crime of moral turpitude, a division superintendent or appropriate central office designee shall not suspend a ~~teacher~~ *an employee* for longer than sixty days and shall not suspend a ~~teacher~~ *an employee* for a period in excess of five days unless such ~~teacher~~ *employee* is advised in writing of the reason for the suspension and afforded an opportunity for a hearing before the

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HB1386

60 school board. *Any hearing for a teacher shall be in accordance with §§ 22.1-311 and 22.1-313; hearings*
61 *for other school board employees shall be in accordance with § 22.1-308. Any ~~teacher~~ employee so*
62 *suspended shall continue to receive his or her then applicable salary unless and until the school board,*
63 *after a hearing, determines otherwise. No ~~teacher~~ employee shall be suspended solely on the basis of the*
64 *teacher's employee's refusal to submit to a polygraph examination requested by the school board.*

65 B. Any ~~teacher~~ employee suspended because of being charged by summons, warrant, information or
66 indictment with a felony, a crime of moral turpitude or any offense involving the sexual molestation,
67 physical or sexual abuse, or rape of a child may be suspended with or without pay. In the event a
68 ~~teacher~~ an employee is suspended without pay, an amount equal to the ~~teacher's~~ employee's salary while
69 on suspended status shall be placed in an interest-bearing demand escrow account. Upon being found
70 not guilty of a crime of moral turpitude or any offense involving the sexual molestation, physical or
71 sexual abuse, or rape of a child or upon the dismissal or nolle prosequi of the charge, such ~~teacher~~
72 employee shall be reinstated with all unpaid salary and accrued interest from the escrow account, less
73 any earnings received by the ~~teacher~~ employee during the period of suspension, but in no event shall
74 such payment exceed one year's salary.

75 C. In the event a ~~teacher~~ an employee is found guilty by an appropriate court of a felony, a crime of
76 moral turpitude or any offense involving the sexual molestation, physical or sexual abuse, or rape of a
77 child and, after all available appeals have been exhausted and such conviction is upheld, all funds in the
78 escrow account shall be repaid to the school board.

79 D. No ~~teacher~~ employee shall have his or her insurance benefits suspended or terminated because of
80 such suspension in accordance with this section.

81 E. Nothing in this section shall be construed to limit the authority of a school board to dismiss or
82 place on probation a teacher or other employee pursuant to Article 3 (§ 22.1-306 et seq.) of this chapter.