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HOUSE BILL NO. 2117

Offered January 23, 1995

A BILL to amend and reenact §§ 22.1-294, 22.1-303, 22.1-304, 22.1-305, 22.1-306, 22.1-309, and 22.1-313 of the Code of Virginia, relating to annual contracts for teachers and administrators.

Patrons—Hamilton, Rhodes and Wardrup

Referred to Committee on Education

Be it enacted by the General Assembly of Virginia:

1. That §§ 22.1-294, 22.1-303, 22.1-304, 22.1-305, 22.1-306, 22.1-309, and 22.1-313 of the Code of Virginia are amended and reenacted as follows:

§ 22.1-294. Probationary terms of service for principals, assistant principals and supervisors; reassigning principal, assistant principal or supervisor to teaching position.

A person employed as a principal, assistant principal or supervisor, including a person who has previously achieved ~~continuing~~ annual contract status as a teacher, shall serve three years in such position in the same school division before acquiring ~~continuing~~ annual contract status as principal, assistant principal or supervisor. ~~Continuing~~ Annual contract status acquired by a principal, assistant principal or supervisor shall not be construed (i) as prohibiting a school board from reassigning such principal, assistant principal or supervisor to a teaching position if notice of reassignment is given by the school board by April ~~fifteenth~~ 15 of any year or (ii) as entitling any such principal, assistant principal or supervisor to the salary paid him as principal, assistant principal or supervisor in the case of any such reassignment to a teaching position. No such salary reduction and reassignment, however, shall be made without first providing such principal, assistant principal or supervisor with written notice of the reason for such reduction and reassignment and an opportunity to present his or her position at an informal meeting with the division superintendent, the division superintendent's designee or the school board. The principal, assistant principal or supervisor shall elect whether such meeting shall be with the division superintendent, the division superintendent's designee or the school board. The school board, division superintendent or the division superintendent's designee shall determine what processes are to be followed at the meeting. The decision to reassign and reduce salary shall be at the sole discretion of the school board.

The intent of this section is to provide an opportunity for a principal, assistant principal or supervisor to discuss the reasons for such salary reduction and reassignment with the division superintendent, his designee or the school board, and the provisions of this section are meant to be procedural only. Nothing contained herein shall be taken to require cause as defined in § 22.1-307 for the salary reduction and reassignment of a principal, assistant principal or supervisor.

As used in this section, "supervisor" means a person who holds a supervisory position as specified in the regulations of the Board of Education and who is required to hold a license as prescribed by the Board of Education.

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

A probationary term of service for three years in the same school division shall be required before a teacher ~~is may be~~ issued a ~~continuing~~ an annual contract. Once a ~~continuing~~ annual 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 one year, is made a part of the contract of employment. Further, when a teacher has attained ~~continuing~~ annual 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 one year, if made a part of the contract for employment.

For the purpose of calculating the three years of service required to attain ~~continuing~~ annual 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.

§ 22.1-304. Reemployment of teacher who has not achieved ~~continuing~~ annual contract status; effect of ~~continuing~~ annual contract; resignation of teacher; reduction in number of teachers.

If a teacher who has not achieved ~~continuing~~ annual contract status receives notice of reemployment, he must accept or reject in writing within fifteen days of receipt of such notice. Except as provided in § 22.1-305, written notice of nonrenewal of the contract must be given by the school board on or before April 15 of each year. If no such notice is given a teacher by April 15, the teacher shall be entitled to a contract for the ensuing year in accordance with local salary stipulations including increments.

Teachers ~~employed after completing~~ who have completed the probationary period shall be entitled to

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60 ~~continuing contracts during~~ and whose service, in the judgment of the school board, has demonstrated
61 good behavior and ~~competent service and competence~~ shall be employed pursuant to an annual contract
62 prior to the age at which they are eligible or required to retire except as hereinafter provided. Written
63 notice of noncontinuation of the *annual* contract by either party must be given by April 15 of each year;
64 otherwise the contract continues in effect for the ensuing year *according to its terms and* in conformity
65 with local salary stipulations including increments.

66 A teacher may resign after April 15 of any school year with the approval of the local school board.
67 The teacher shall request release from contract at least two weeks in advance of intended date of
68 resignation. Such request shall be in writing and shall set forth the cause of resignation.

69 ~~In the event that~~ If the board declines to grant the request for release on the grounds of insufficient
70 or unjustifiable cause, and the teacher breaches such contract, disciplinary action, which may include
71 revocation of the teacher's license, may be taken pursuant to regulations prescribed by the Board of
72 Education.

73 As soon after April 15, as the school budget ~~shall have~~ *has* been approved by the appropriating
74 body, the school board shall furnish each teacher a statement confirming continuation of employment,
75 setting forth assignment and salary.

76 Nothing in the ~~continuing~~ *annual* contract shall be construed to authorize the school board to contract
77 for any financial obligation beyond the period for which funds have been made available with which to
78 meet such obligation.

79 A school board may reduce the number of teachers, whether or not such teachers have reached
80 ~~continuing~~ *annual* contract status, because of decrease in enrollment or abolition of particular subjects.

81 § 22.1-305. Nonrenewal of contract of probationary teacher.

82 A. Before a division superintendent recommends to the school board nonrenewal of the contract of a
83 teacher who has not achieved ~~continuing~~ *annual* contract status, the division superintendent shall notify
84 the teacher of the proposed recommendation. Upon written request of the teacher within five working
85 days after receipt of such notice, the division superintendent or his designee shall orally provide the
86 specific reasons, if any, for such recommendation, along with supporting documentation, if any, to the
87 teacher and, if requested by the teacher, to his or her representative. Within ten days after receiving such
88 reasons, the teacher may request, by notification in writing to the division superintendent, a conference
89 before the division superintendent. Upon such request, the division superintendent shall set a date for the
90 conference, which shall be within thirty days of the request, and shall give the teacher at least fifteen
91 days' notice of the time and place of the conference.

92 B. The conference shall be before the division superintendent or his designee. No such designee shall
93 have recommended to the division superintendent the nonrenewal of the teacher's contract. The teacher
94 and the person or persons who recommended the nonrenewal of the teacher's contract to the division
95 superintendent, or a representative of either or both, shall be allowed to participate in the conference, but
96 no such representative shall be an attorney.

97 C. If the conference is before a designee of the division superintendent, the designee shall
98 communicate his recommendations to the division superintendent and to the teacher.

99 D. The division superintendent shall notify the teacher, in writing, of his intention with respect to the
100 recommendation within ten days after the conference.

101 E. In any case in which a teacher requests a conference as provided in this section, written notice of
102 nonrenewal of the contract by the school board must be given within thirty days after the division
103 superintendent notifies the teacher of his intention with respect to the recommendation and the
104 provisions of § 22.1-304 requiring such notice on or before April ~~fifteenth~~ 15 shall not be applicable.

105 F. The conference shall be confidential and no written or oral communication of such conference
106 shall be made to anyone other than the school board, in executive session, and employees of the school
107 division having an interest therein; ~~provided, however, that~~ both the teacher and the division
108 superintendent, upon request, may provide the reasons for the nonrenewal to a potential employer of the
109 teacher.

110 G. The provisions of this section shall be inapplicable when a decrease in enrollment or the abolition
111 of a particular subject or reduction in the number of classes offered in a particular subject causes a
112 reduction in the number of teachers; ~~provided, however, that~~ a statement to that effect shall be placed in
113 the personnel file of each teacher whose contract is ~~nonrenewed~~ *not renewed* for any such reason.

114 H. The intent of this section is to provide an opportunity for a probationary teacher to discuss the
115 reasons for nonrenewal with the division superintendent or his designee, and the provisions of this
116 section are meant to be procedural only. Nothing contained herein shall be taken to require cause as
117 defined in § 22.1-307 for the nonrenewal of the contract of a teacher who has not achieved ~~continuing~~
118 *annual* contract status nor shall the failure of the school board or the division superintendent to comply
119 with any time requirement herein constitute a basis for continued employment of the teacher.

120 § 22.1-306. Definitions.

121 As used in this article:

1. "Grievance" means a complaint or dispute by a teacher relating to his or her employment including, but not necessarily limited to: (i) disciplinary action including dismissal or placing on probation; (ii) the application or interpretation of: (a) personnel policies, (b) procedures, (c) rules and regulations, (d) ordinances and (e) statutes; (iii) acts of reprisal against a teacher for filing or processing a grievance, participating as a witness in any step, meeting or hearing relating to a grievance, or serving as a member of a fact-finding panel; and (iv) complaints of discrimination on the basis of race, color, creed, political affiliation, handicap, age, national origin or sex. Each school board shall have the exclusive right to manage the affairs and operations of the school division. Accordingly, the term "grievance" shall not include a complaint or dispute by a teacher relating to (i) establishment and revision of wages or salaries, position classifications or general benefits, (ii) suspension of a teacher or nonrenewal of the contract of a teacher who has not achieved ~~continuing~~ *annual* contract status, (iii) the establishment or contents of ordinances, statutes or personnel policies, procedures, rules and regulations, (iv) failure to promote, ~~or~~ (v) discharge, layoff or suspension from duties because of decrease in enrollment, decrease in enrollment or abolition of a particular subject or insufficient funding, (vi) hiring, transfer, assignment and retention of teachers within the school division, ~~or~~ (vii) suspension from duties in emergencies, *or* (viii) the methods, means and personnel by which the school division's operations are to be carried on.

While these management rights are reserved to the school board, failure to apply, where applicable, the rules, regulations, policies, or procedures as written or established by the school board is grievable.

2. "Dismissal" means the dismissal of any teacher during the term of such teacher's contract and the nonrenewal *by the school board* of the contract of a teacher on ~~continuing~~ *annual* contract.

§ 22.1-309. Notice to teacher of recommendation of dismissal, *nonrenewal of annual contract*, or placing on probation; school board not to consider merits during notice; superintendent required to provide reasons for recommendation upon request.

~~In the event~~ If a division superintendent determines to recommend dismissal of any teacher, *the nonrenewal of an annual contract*, or the placing on probation of a teacher on ~~continuing~~ *annual* contract, written notice shall be sent to the teacher notifying him of the proposed dismissal, *nonrenewal*, or placing on probation and informing him that within fifteen days after receiving the notice the teacher may request a hearing before the school board as provided in § 22.1-311 or before a fact-finding panel as provided in § 22.1-312. During such fifteen-day period and thereafter until a hearing is held in accordance with the provisions herein, 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 herein. 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~~ If a teacher requests a hearing pursuant to § 22.1-311 or § 22.1-312, the division superintendent shall provide, within ten 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, *nonrenewal*, or probation. Within ten 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, *nonrenewal*, or probation. 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" ~~shall mean~~ *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.

§ 22.1-313. 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, *nonrenewal of annual contracts*, suspensions, and placing on probation.

B. In the case of a hearing before the school board, the school board shall give the teacher its written decision within thirty days after the hearing. A record of the proceedings shall be taken and made available as provided in subsection I of § 22.1-312. 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. In the case of a hearing before a fact-finding panel, the school board shall give the teacher its written decision within thirty days after the school board receives both the transcript of such hearing, if any, and the panel's findings of fact and recommendations; however, should there be a further hearing before the school board, as hereafter provided, such decision shall be furnished the teacher within thirty days after such further hearing. The decision of the school board shall be reached after considering the transcript, if any, and the findings of

183 fact and recommendations of the panel and such further evidence as the school board may receive at any
184 further hearing.

185 C. A ~~teacher may be dismissed, suspended or placed on probation by~~ a majority of a quorum of the
186 school board *may dismiss, suspend, place on probation, or decline to renew the annual contract of a*
187 *teacher*. In the event the school board's decision is at variance with the recommendations of the
188 fact-finding panel, the school board shall be required to conduct an additional hearing which shall be
189 public unless the teacher requests a private one. However, if the fact-finding hearing was held in private,
190 the additional hearing shall be held in private. The hearing shall be conducted by the school board
191 pursuant to subsection D of this section, except that the grievant and the division superintendent shall be
192 allowed to appear, to be represented, and to give testimony. However, the additional hearing shall not
193 include examination and cross-examination of any other witnesses. The school board's written decision
194 shall include the rationale for the decision.

195 D. In any case in which a further hearing by a school board is held after a hearing before a
196 fact-finding panel, the school board shall consider at such further hearing the transcript, if any, the
197 findings and recommendations of the fact-finding panel and such further evidence, including that of
198 witnesses having testified before the panel, as the school board deems appropriate or as may be offered
199 on behalf of the grievant or the respondent. A school board may initiate any such hearing upon written
200 notice to the teacher and the division superintendent within ten days after the board receives the findings
201 of fact and recommendations of the panel and any transcript of any panel hearing. Such notice shall
202 specify each matter to be inquired into by the school board. In any case in which a teacher may initiate
203 any such hearing, the teacher shall request such hearing in writing within ten days after receiving the
204 findings of fact and recommendations of the panel and any transcript of the panel hearing. Any decision
205 by the school board shall be based solely on the transcript, if any, the findings of fact and
206 recommendations of the panel, and any evidence relevant to the issues of the original grievance adduced
207 at the hearing in the presence of each party. Such hearing shall be conducted as a hearing by the school
208 board as provided in § 22.1-311.

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