

## 1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act to amend and reenact § 2.1-116.07 of the Code of Virginia, relating to the state grievance*  
3 *procedure; award of attorney's fees.*

4 [H 1155]

5 Approved

6 **Be it enacted by the General Assembly of Virginia:**7 **1. That § 2.1-116.07 of the Code of Virginia is amended and reenacted as follows:**

8 § 2.1-116.07. Hearing officers; duties; decisions; costs.

9 A. The Director shall assign a hearing officer to conduct the grievance hearing. All hearing officers  
10 shall be selected from the list of administrative hearing officers maintained by the Supreme Court of  
11 Virginia pursuant to § 9-6.14:14.1. In addition to the training requirements imposed by the Supreme  
12 Court, each hearing officer shall attend annually at least one day of training in employment law or state  
13 personnel policies and organizations. Such training shall be conducted by the Department or an  
14 organization approved by the Virginia State Bar for continuing legal education.

15 B. Hearing officers shall have the following powers and duties:

16 1. Hold conferences for the settlement or simplification of issues;

17 2. Dispose of procedural requests;

18 3. Issue orders requiring testimony or the production of evidence;

19 4. Administer oaths and affirmations;

20 5. Receive probative evidence; exclude irrelevant, immaterial, insubstantial, privileged, or repetitive  
21 proofs, rebuttals, or cross-examinations; rule upon offers of proof; and oversee an accurate verbatim  
22 recording of the evidence;

23 6. Order appropriate remedies, including reinstatement, back pay, full reinstatement of fringe benefits  
24 and seniority rights, or any combination of these remedies; and

25 7. Take other actions as necessary or specified in the grievance procedure.

26 C. The decision of the hearing officer shall (i) be in writing, (ii) contain findings of fact as to the  
27 material issues in a case and the basis for those findings, and (iii) be final and binding if consistent with  
28 law and policy. In grievances initiated by state employees, the Director of the Department of Personnel  
29 and Training shall determine whether the decision is consistent with policy. The hearing officer's  
30 decision is effective from the date issued and shall be implemented immediately unless circumstances  
31 beyond the control of the agency delay such implementation.

32 D. Either party may petition the circuit court having jurisdiction in the locality in which the  
33 employee is employed for an order requiring implementation of the hearing officer's decision. The court  
34 may award attorneys' fees to either party *if such party substantially prevails on the merits of the case*  
35 *and the opposing party's position is not substantially justified, unless special circumstances would make*  
36 *an award unjust.*

37 E. Except for the employee's counsel or advocate fees, the agency from which the grievance arises  
38 shall bear the costs for the hearing officer and other associated hearing expenses.

ENROLLED

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