

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; decisions of hearing officers.*

4 [S 1302]

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, on a rotating basis, from the list of administrative hearing officers maintained by the
 11 Supreme Court of Virginia pursuant to § 9-6.14:14.1. In addition to the training requirements imposed
 12 by the Supreme Court, each hearing officer shall attend annually at least one day of training in
 13 employment law or state personnel policies and organizations. Such training shall be conducted by the
 14 Department or an 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. For those issues qualified for a hearing, order appropriate remedies. Relief may include
 24 reinstatement, back pay, full reinstatement of fringe benefits and seniority rights, or any combination of
 25 these remedies; and

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

27 C. The decision of the hearing officer shall (i) be in writing, (ii) contain findings of fact as to the
 28 material issues in the case and the basis for those findings, and (iii) be final and binding if consistent
 29 with law and policy. In grievances initiated by state employees, the Director of the Department of
 30 Personnel and Training shall determine whether the decision is consistent with policy. *In grievances*
 31 *arising out of the Department of Mental Health, Mental Retardation and Substance Abuse Services*
 32 *which challenge allegations of patient abuse, the Director of the Department of Employee Relations*
 33 *Counselors shall determine whether the decision is consistent with law.* The hearing officer's decision is
 34 effective from the date issued and shall be implemented immediately unless circumstances beyond the
 35 control of the agency delay such implementation.

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

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

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