

# VIRGINIA ACTS OF ASSEMBLY -- 2013 SESSION

## CHAPTER 588

*An Act to amend and reenact §§ 2.2-507, 22.1-79, 22.1-253.13:5, 22.1-293, 22.1-294, 22.1-295, 22.1-298.1, 22.1-299, 22.1-302, 22.1-303, 22.1-304, 22.1-305, 22.1-305.1, 22.1-306, 22.1-307, 22.1-309, 22.1-311, 22.1-313, and 22.1-314 of the Code of Virginia and to repeal §§ 22.1-299.3, 22.1-310, and 22.1-312 of the Code of Virginia, relating to public schools; evaluation policies and grievance procedures.*

[H 2151]

Approved March 20, 2013

### **Be it enacted by the General Assembly of Virginia:**

**1. That §§ 2.2-507, 22.1-79, 22.1-253.13:5, 22.1-293, 22.1-294, 22.1-295, 22.1-298.1, 22.1-299, 22.1-302, 22.1-303, 22.1-304, 22.1-305, 22.1-305.1, 22.1-306, 22.1-307, 22.1-309, 22.1-311, 22.1-313, and 22.1-314 of the Code of Virginia are amended and reenacted as follows:**

#### **§ 2.2-507. Legal service in civil matters.**

A. All legal service in civil matters for the Commonwealth, the Governor, and every state department, institution, division, commission, board, bureau, agency, entity, official, court, or judge, including the conduct of all civil litigation in which any of them are interested, shall be rendered and performed by the Attorney General, except as provided in this chapter and except for any litigation concerning a justice or judge initiated by the Judicial Inquiry and Review Commission. No regular counsel shall be employed for or by the Governor or any state department, institution, division, commission, board, bureau, agency, entity, or official. The Attorney General may represent personally or through one or more of his assistants any number of state departments, institutions, divisions, commissions, boards, bureaus, agencies, entities, officials, courts, or judges that are parties to the same transaction or that are parties in the same civil or administrative proceeding and may represent multiple interests within the same department, institution, division, commission, board, bureau, agency, or entity. The soil and water conservation district directors or districts may request legal advice from local, public, or private sources; however, upon request of the soil and water conservation district directors or districts, the Attorney General shall provide legal service in civil matters for such district directors or districts.

B. The Attorney General may represent personally or through one of his assistants any of the following persons who are made defendant in any civil action for damages arising out of any matter connected with their official duties:

1. Members, agents or employees of the Alcoholic Beverage Control Board;
2. Agents inspecting or investigators appointed by the State Corporation Commission;
3. Agents, investigators, or auditors employed by the Department of Taxation;
4. Members, agents or employees of the State Board of Behavioral Health and Developmental Services, the Department of Behavioral Health and Developmental Services, the State Board of Health, the State Department of Health, the Department of General Services, the State Board of Social Services, the Department of Social Services, the State Board of Corrections, the Department of Corrections, the State Board of Juvenile Justice, the Department of Juvenile Justice, the Virginia Parole Board, or the Department of Agriculture and Consumer Services;
5. Persons employed by the Commonwealth Transportation Board;
6. Persons employed by the Commissioner of Motor Vehicles;
7. Persons appointed by the Commissioner of Marine Resources;
8. Police officers appointed by the Superintendent of State Police;
9. Conservation police officers appointed by the Department of Game and Inland Fisheries;
10. ~~Third impartial panel members~~ *Hearing officers* appointed to hear a teacher's grievance pursuant to § 22.1-312 22.1-311;
11. Staff members or volunteers participating in a court-appointed special advocate program pursuant to Article 5 (§ 9.1-151 et seq.) of Chapter 1 of Title 9.1;
12. Any emergency medical service agency that is a licensee of the Department of Health in any civil matter and any guardian ad litem appointed by a court in a civil matter brought against him for alleged errors or omissions in the discharge of his court-appointed duties;
13. Conservation officers of the Department of Conservation and Recreation; or
14. A person appointed by written order of a circuit court judge to run an existing corporation or company as the judge's representative, when that person is acting in execution of a lawful order of the court and the order specifically refers to this section and appoints such person to serve as an agent of the Commonwealth.

Upon request of the affected individual, the Attorney General may represent personally or through one of his assistants any basic or advanced emergency medical care attendant or technician possessing a

valid certificate issued by authority of the State Board of Health in any civil matter in which a defense of immunity from liability is raised pursuant to § 8.01-225.

C. If, in the opinion of the Attorney General, it is impracticable or uneconomical for such legal service to be rendered by him or one of his assistants, he may employ special counsel for this purpose, whose compensation shall be fixed by the Attorney General. The compensation for such special counsel shall be paid out of the funds appropriated for the administration of the board, commission, division or department being represented or whose members, officers, inspectors, investigators, or other employees are being represented pursuant to this section. Notwithstanding any provision of this section to the contrary, the Supreme Court may employ its own counsel in any matter arising out of its official duties in which it, or any justice, is a party.

**§ 22.1-79. Powers and duties.**

A school board shall:

1. See that the school laws are properly explained, enforced and observed;
2. Secure, by visitation or otherwise, as full information as possible about the conduct of the public schools in the school division and take care that they are conducted according to law and with the utmost efficiency;

3. Care for, manage and control the property of the school division and provide for the erecting, furnishing, equipping, and noninstructional operating of necessary school buildings and appurtenances and the maintenance thereof by purchase, lease, or other contracts;

4. Provide for the consolidation of schools or redistricting of school boundaries or adopt pupil assignment plans whenever such procedure will contribute to the efficiency of the school division;

5. Insofar as not inconsistent with state statutes and regulations of the Board of Education, operate and maintain the public schools in the school division and determine the length of the school term, the studies to be pursued, the methods of teaching and the government to be employed in the schools;

6. In instances in which no grievance procedure has been adopted prior to January 1, 1991, establish and administer by July 1, 1992, a grievance procedure for all school board employees, except the division superintendent and those employees covered under the provisions of Article 2 (§ 22.1-293 et seq.) and Article 3 (§ 22.1-306 et seq.) of Chapter 15 of this title, who have completed such probationary period as may be required by the school board, not to exceed 18 months. The grievance procedure shall afford a timely and fair method of the resolution of disputes arising between the school board and such employees regarding dismissal or other disciplinary actions, excluding suspensions, and shall be consistent with the provisions of the Board of Education's procedures for adjusting grievances; ~~except that there shall be no right to a hearing before a fact-finding panel.~~ Except in the case of dismissal, suspension, or other disciplinary action, the grievance procedure prescribed by the Board of Education pursuant to § 22.1-308 shall apply to all full-time employees of a school board, except supervisory employees;

7. Perform such other duties as shall be prescribed by the Board of Education or as are imposed by law;

8. Obtain public comment through a public hearing not less than 10 days after reasonable notice to the public in a newspaper of general circulation in the school division prior to providing (i) for the consolidation of schools; (ii) the transfer from the public school system of the administration of all instructional services for any public school classroom or all noninstructional services in the school division pursuant to a contract with any private entity or organization; or (iii) in school divisions having 15,000 pupils or more in average daily membership, for redistricting of school boundaries or adopting any pupil assignment plan affecting the assignment of 15 percent or more of the pupils in average daily membership in the affected school. Such public hearing may be held at the same time and place as the meeting of the school board at which the proposed action is taken if the public hearing is held before the action is taken. If a public hearing has been held prior to the effective date of this provision on a proposed consolidation, redistricting or pupil assignment plan which is to be implemented after the effective date of this provision, an additional public hearing shall not be required;

9. (Expires July 1, 2015) At least annually, survey the school division to identify critical shortages of teachers and administrative personnel by subject matter, and report such critical shortages to the Superintendent of Public Instruction and to the Virginia Retirement System; however, the school board may request the division superintendent to conduct such survey and submit such report to the school board, the Superintendent, and the Virginia Retirement System; and

10. Ensure that the public schools within the school division are registered with the Department of State Police to receive from the State Police electronic notice of the registration or reregistration of any sex offender within that school division pursuant to § 9.1-914.

**§ 22.1-253.13.5. Standard 5. Quality of classroom instruction and educational leadership.**

A. Each member of the Board of Education shall participate in high-quality professional development programs on personnel, curriculum and current issues in education as part of his service on the Board.

B. Consistent with the finding that leadership is essential for the advancement of public education in the Commonwealth, teacher, ~~administrator~~ *principal*, and superintendent evaluations shall be consistent with the performance ~~objectives~~ *standards* included in the Guidelines for Uniform Performance

Standards and Evaluation Criteria for Teachers, ~~Administrators~~ *Principals*, and Superintendents. *Evaluations shall include student academic progress as a significant component and an overall summative rating.* Teacher evaluations shall include regular observation and evidence that instruction is aligned with the school's curriculum. Evaluations shall include identification of areas of individual strengths and weaknesses and recommendations for appropriate professional activities.

C. The Board of Education shall provide guidance on high-quality professional development for (i) teachers, principals, supervisors, division superintendents, and other school staff; (ii) ~~administrative and supervisory personnel~~ *principals, supervisors, and division superintendents* in the evaluation and documentation of teacher and ~~administrator~~ *principal* performance based on student academic progress and the skills and knowledge of such instructional or administrative personnel; (iii) school board members on personnel, curriculum and current issues in education; and (iv) programs in Braille for teachers of the blind and visually impaired, in cooperation with the Virginia Department for the Blind and Vision Impaired.

The Board shall also provide technical assistance on high-quality professional development to local school boards designed to ensure that all instructional personnel are proficient in the use of educational technology consistent with its comprehensive plan for educational technology.

D. Each local school board shall require (i) its members to participate annually in high-quality professional development activities at the state, local, or national levels on governance, including, but not limited to, personnel policies and practices; *the evaluation of personnel*, curriculum, and instruction; use of data in planning and decision making; and current issues in education as part of their service on the local board and (ii) the division superintendent to participate annually in high-quality professional development activities at the local, state, or national levels, *including the Standards of Quality, Board of Education regulations, and the Guidelines for Uniform Performance Standards and Evaluation Criteria for Teachers, Principals, and Superintendents.*

E. Each local school board shall provide a program of high-quality professional development (i) in the use and documentation of performance standards and evaluation criteria based on student academic progress and skills for teachers, *principals*, and ~~administrators~~ *superintendents* to clarify roles and performance expectations and to facilitate the successful implementation of instructional programs that promote student achievement at the school and classroom levels; (ii) as part of the license renewal process, to assist teachers and principals in acquiring the skills needed to work with gifted students, students with disabilities, and students who have been identified as having limited English proficiency and to increase student achievement and expand the knowledge and skills students require to meet the standards for academic performance set by the Board of Education; (iii) in educational technology for all instructional personnel which is designed to facilitate integration of computer skills and related technology into the curricula; and (iv) for ~~administrative personnel~~ *principals and supervisors* designed to increase proficiency in instructional leadership and management, including training in the evaluation and documentation of teacher and ~~administrator~~ *principal* performance based on student academic progress and the skills and knowledge of such instructional or administrative personnel.

In addition, each local school board shall also provide teachers and principals with high-quality professional development programs each year in ~~(i)~~ *(a)* instructional content; ~~(ii)~~ *(b)* the preparation of tests and other assessment measures; ~~(iii)~~ *(c)* methods for assessing the progress of individual students, including Standards of Learning assessment materials or other criterion-referenced tests that match locally developed objectives; ~~(iv)~~ *(d)* instruction and remediation techniques in English, mathematics, science, and history and social science; ~~(v)~~ *(e)* interpreting test data for instructional purposes; ~~(vi)~~ *(f)* technology applications to implement the Standards of Learning; and ~~(vii)~~ *(g)* effective classroom management.

F. Schools and school divisions shall include as an integral component of their comprehensive plans required by § 22.1-253.13:6, high-quality professional development programs that support the recruitment, employment, and retention of qualified teachers and principals. Each school board shall require all instructional personnel to participate each year in these professional development programs.

G. Each local school board shall annually review its professional development program for quality, effectiveness, participation by instructional personnel, and relevancy to the instructional needs of teachers and the academic achievement needs of the students in the school division.

**§ 22.1-293. School boards authorized to employ principals and assistant principals; license required; powers and duties.**

A. A school board, upon recommendation of the division superintendent, may employ principals and assistant principals. Persons employed in these positions shall hold licenses as prescribed by the Board of Education.

B. A principal shall provide instructional leadership in, shall be responsible for the administration of, and shall supervise the operation and management of the school or schools and property to which he has been assigned, in accordance with the rules and regulations of the school board and under the supervision of the division superintendent.

C. A principal may submit recommendations to the division superintendent for the appointment, assignment, promotion, transfer, and dismissal of all personnel assigned to his supervision. ~~Beginning~~

September 1, 2000, (i) ~~principals~~ *Principals* must have received training, provided pursuant to § 22.1-253.13:5, in the evaluation and documentation of employee performance, which evaluation and documentation shall include, but shall not be limited to, employee skills and knowledge and student academic progress, prior to submitting such recommendations; and (ii) ~~assistant~~ *Assistant* principals and other ~~administrative~~ *supervisory* personnel participating in the evaluation and documentation of employee performance must also have received such training in the evaluation and documentation of employee performance.

D. A principal shall perform such other duties as may be assigned by the division superintendent pursuant to the rules and regulations of the school board.

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

A. A person employed as a principal, assistant principal, or supervisor, including a person who has previously achieved continuing contract status as a teacher, shall serve *a probationary term of three years in such position in the same school division before acquiring continuing contract status as principal, assistant principal, or supervisor. With such funds as may be appropriated by the General Assembly for such purpose, school boards shall provide each probationary principal, except probationary principals who have prior successful experience as principals, as determined by the local school board in a school division, a mentor, as described in guidelines developed by the Board, during the first year of the probationary period, to assist such probationary principal in achieving excellence in administration.*

B. Each local school board shall adopt for use by the division superintendent clearly defined criteria for a performance evaluation process for principals, assistant principals, and supervisors that are consistent with the performance ~~objectives~~ *standards* set forth in the Guidelines for Uniform Performance Standards and Evaluation Criteria for Teachers, ~~Administrators~~ *Principals*, and Superintendents as provided in § 22.1-253.13:5 and that includes, among other things, an assessment of such administrators' skills and knowledge; student academic progress and school gains in student learning; and effectiveness in addressing school safety and enforcing student discipline. The division superintendent shall implement such performance evaluation process in making employment recommendations to the school board pursuant to § 22.1-293. *Principals and assistant principals who have achieved continuing contract status shall be formally evaluated at least once every three years and evaluated informally at least once each year that they are not formally evaluated. Probationary principals and assistant principals shall be evaluated each school year. The division superintendent shall consider such evaluations, among other things, in making recommendations to the school board regarding the nonrenewal of the probationary contract of any principal or assistant principal.*

C. Continuing 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~~ *June* 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.

D. 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. *Before recommending such reassignment, the division superintendent shall consider, among other things, the performance evaluations for such principal, assistant principal, or supervisor.* 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.

E. As used in this section, "supervisor" means a person who holds *an instructional* 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.

**§ 22.1-295. Employment of teachers.**

A. The teachers in the public schools of a school division shall be employed and placed in appropriate schools by the school board upon recommendation of the division superintendent. In placing teachers, school boards shall fill positions with licensed instructional personnel qualified in the relevant subject areas.

B. School boards shall adopt employment policies and practices designed to promote the employment

and retention of highly qualified teachers and to effectively serve the educational needs of students. Such policies shall include, but need not be limited to, incentives for excellence in teaching, including financial support for teachers attending professional development seminars or those seeking and obtaining national certification.

C. School boards shall develop a procedure for use by division superintendents and principals in evaluating ~~instructional personnel~~ *teachers* that is appropriate to the tasks performed and addresses, among other things, student academic progress and the skills and knowledge of instructional personnel, including, but not limited to, instructional methodology, classroom management, and subject matter knowledge.

~~Instructional personnel~~ *Teachers* employed by local school boards who have achieved continuing contract status shall be *formally* evaluated ~~not less than at least once every three years and more often as deemed necessary by the principal, and they shall be evaluated informally during each year in which they are not formally evaluated.~~ Any ~~instructional personnel,~~ *teacher* who has achieved continuing contract status, ~~receiving~~ *who receives* an unsatisfactory *formal* evaluation and who continues to be employed by the local school board shall be *formally* evaluated ~~no later than one year after receiving such unsatisfactory evaluation in the following year.~~ The evaluation shall be maintained in the employee's personnel file.

Each local superintendent shall annually certify divisionwide compliance with the provisions of this section to the Department.

**§ 22.1-298.1. Regulations governing licensure.**

A. As used in this section:

"Alternate route to licensure" means a nontraditional route to teacher licensure available to individuals who meet the criteria specified in the regulations issued by the Board of Education.

"Licensure by reciprocity" means a process used to issue a license to an individual coming into Virginia from another state when that individual meets certain conditions specified in the Board of Education's regulations.

"Professional teacher's assessment" means those tests mandated for licensure as prescribed by the Board of Education.

"Provisional license" means a nonrenewable license issued by the Board of Education for a specified period of time, not to exceed three years, to an individual who may be employed by a school division in Virginia and who generally meets the requirements specified in the Board of Education's regulations for licensure, but who may need to take additional coursework or pass additional assessments to be fully licensed with a renewable license.

"Renewable license" means a license issued by the Board of Education for five years to an individual who meets the requirements specified in the Board of Education's regulations.

B. The Board of Education shall prescribe, by regulation, the requirements for the licensure of teachers and other school personnel required to hold a license. Such regulations shall include requirements for the denial, suspension, cancellation, revocation, and reinstatement of licensure. The Board of Education shall revoke the license of any person for whom it has received a notice of dismissal or resignation pursuant to subsection F of § 22.1-313 and, in the case of a person who is the subject of a founded complaint of child abuse or neglect, after all rights to any appeal provided by § 63.2-1526 have been exhausted. Regardless of the authority of any other agency of the Commonwealth to approve educational programs, only the Board of Education shall have the authority to license teachers to be regularly employed by school boards, including those teachers employed to provide nursing education.

The Board of Education shall prescribe by regulation the licensure requirements for teachers who teach only online courses, as defined in § 22.1-212.23. Such license shall be valid only for teaching online courses. Teachers who hold a five-year renewable license issued by the Board of Education may teach online courses for which they are properly endorsed.

~~Notwithstanding the provisions of this section and the Board's authority to license teachers, local school boards shall be authorized to issue valid, three-year local eligibility licenses pursuant to § 22.1-299.3.~~

C. The Board of Education's regulations shall include requirements that a person seeking initial licensure:

1. Complete professional assessments as prescribed by the Board of Education;
2. Complete study in attention deficit disorder;
3. Complete study in gifted education, including the use of multiple criteria to identify gifted students; and
4. Complete study in methods of improving communication between schools and families and ways of increasing family involvement in student learning at home and at school.

D. In addition, such regulations shall include requirements that:

1. Every person seeking initial licensure or renewal of a license demonstrate proficiency in the use of educational technology for instruction;
2. Every person seeking initial licensure and persons seeking licensure renewal as teachers who have

not completed such study shall complete study in child abuse recognition and intervention in accordance with curriculum guidelines developed by the Board of Education in consultation with the Department of Social Services that are relevant to the specific teacher licensure routes;

3. Every person seeking initial licensure or renewal of a license shall receive professional development in instructional methods tailored to promote student academic progress and effective preparation for the Standards of Learning end-of-course and end-of-grade assessments; and

4. Every person seeking licensure with an endorsement as a teacher of the blind and visually impaired shall demonstrate proficiency in reading and writing Braille.

E. The Board's regulations shall require that initial licensure for principals and assistant principals be contingent upon passage of an assessment as prescribed by the Board.

F. The Board shall establish criteria in its regulations to effectuate the substitution of experiential learning for coursework for those persons seeking initial licensure through an alternate route as defined in Board regulations.

G. Notwithstanding any provision of law to the contrary, the Board may provide for the issuance of a provisional license, valid for a period not to exceed three years, to any person who does not meet the requirements of this section or any other requirement for licensure imposed by law.

H. The Board's licensure regulations shall also provide for licensure by reciprocity:

1. With comparable endorsement areas for those individuals holding a valid out-of-state teaching license and national certification from the National Board for Professional Teaching Standards or a nationally recognized certification program approved by the Board of Education. The application for such individuals shall require evidence of such valid licensure and national certification and shall not require official student transcripts;

2. For individuals who have obtained a valid out-of-state license, with full credentials and without deficiencies, that is in force at the time the application for a Virginia license is received by the Department of Education. The individual must establish a file in the Department of Education by submitting a complete application packet, which shall include official student transcripts. An assessment of basic skills as provided in § 22.1-298.2 and service requirements shall not be imposed for these licensed individuals; however, other licensing assessments, as prescribed by the Board of Education, shall be required; and

3. The Board may include other provisions for reciprocity in its regulations.

#### **§ 22.1-299. License required of teachers.**

No teacher shall be regularly employed by a school board or paid from public funds unless such teacher holds a license or provisional license issued by the Board of Education ~~or a three-year local eligibility license issued by a local school board pursuant to § 22.1-299.3.~~ Notwithstanding the provision in § 22.1-298.1 that the provisional license is limited to three years, if a teacher employed in Virginia under a provisional license is activated or deployed for military service within a school year (July 1-June 30), an additional year will be added to the teacher's provisional license for each school year or portion thereof the teacher is activated or deployed. The additional year or years shall be granted the following year or years after the return of the teacher from deployment or activation. ~~Local school divisions may grant similar extensions for local eligibility licenses in their discretion.~~

In accordance with regulations prescribed by the Board, a person not meeting the requirements for a license or provisional license may be employed and paid from public funds by a school board temporarily as a substitute teacher to meet an emergency.

#### **§ 22.1-302. Written contracts required; execution of contracts; qualifications of temporarily employed teachers; rules and regulations.**

A. A written contract, in a form ~~prescribed~~ *permitted* by the Board of Education ~~Education's regulations~~, shall be made by the school board with each teacher employed by it, except those who are temporarily employed, before such teacher enters upon his duties. Such contract shall be signed in duplicate, with a copy thereof furnished to both parties.

*The standard 10-month contract shall include 200 days, including (i) a minimum of 180 teaching days or 990 instructional hours and (ii) up to 20 days for activities such as teaching, participating in professional development, planning, evaluating, completing records and reports, participating on committees or in conferences, or such other activities as may be assigned or approved by the local school board.*

A temporarily employed teacher, as used in this section, ~~shall mean~~ *means* (i) one who is employed to substitute for a contracted teacher for a temporary period of time during the contracted teacher's absence; or (ii) one who is employed to fill a teacher vacancy for a period of time, but for no longer than 90 teaching days in such vacancy, unless otherwise approved by the Superintendent of Public Instruction on a case-by-case basis, during one school year.

B. The Board of Education shall promulgate regulations regarding temporarily employed teachers, as defined in this section, which shall provide that such teachers be at least ~~eighteen~~ 18 years of age and that they hold a high school diploma or a general educational development (GED) certificate.

*A temporarily employed teacher is not required to be licensed by the Board of Education, nor is the local school board required to enter into a written contract with a temporarily employed teacher.*

However, local school boards shall establish employment qualifications for temporarily employed teachers which may exceed the Board's regulations for the employment of such teachers. School boards shall also seek to ensure that temporarily employed teachers who are engaged as long-term substitutes shall exceed baseline employment qualifications.

C. A separate contract in a form ~~prescribed~~ *permitted* by the Board of Education shall be executed by the school board with ~~such employee~~ *a teacher* who is receiving a monetary supplement for any athletic coaching or extracurricular activity sponsorship assignment. This contract shall be separate and apart from the contract for teaching.

Termination of a separate contract for any athletic coaching or extracurricular activity sponsorship assignment by either party thereto shall not constitute cause for termination of the separate teaching contract of the coach or teacher.

All such contracts shall require the party intending to terminate the coaching or extracurricular activity sponsorship contract to give reasonable notice to the other party before termination thereof shall become effective.

For the purposes of this section, "extracurricular activity sponsorship" means an assignment for which a monetary supplement is received, requiring responsibility for any student organizations, clubs, or groups, such as service clubs, academic clubs and teams, cheerleading squads, student publication and literary groups, and visual and performing arts organizations except those that are conducted in conjunction with regular classroom, curriculum, or instructional programs.

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

A. A probationary term of service ~~for three~~ *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 ~~instructional personnel~~ *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 ~~one year~~ *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 ~~one year~~ *two years*, if made a part of the contract for employment.

C. For the purpose of calculating the ~~three~~ 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 ~~pursuant to § 22.1-299.3~~ *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 ~~the three-year~~ *a probationary period term of service of at least three years and, at the option of the local school board, up to five years* prior to being eligible for continuing contract status pursuant to this section.

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

A. If a teacher who has not achieved continuing contract status receives notice of reemployment, he must accept or reject in writing within 15 days of receipt of such notice. Except as provided in § 22.1-305 and except in the case of a reduction in force as provided in subsection F, written notice of

nonrenewal of the *probationary* contract must be given by the school board on or before June 15 of each year. If no such notice is given a teacher by June 15, the teacher shall be entitled to a contract for the ensuing year in accordance with local salary stipulations including increments.

B. Teachers employed after completing the probationary period shall be entitled to continuing contracts during good behavior and competent service ~~and prior to the age at which they are eligible or required to retire except as hereinafter provided~~. Written notice of noncontinuation of the contract by either party must be given by June 15 of each year; otherwise the contract continues in effect for the ensuing year in conformity with local salary stipulations including increments.

C. A teacher may resign after June 15 of any school year with the approval of the local school board or, upon authorization by the school board, with the approval of the division superintendent. The teacher shall request release from contract at least two weeks in advance of intended date of resignation. Such request shall be in writing and shall set forth the cause of resignation.

If the division superintendent has been authorized to approve resignations, a teacher may, within one week, withdraw a request to resign. Upon the expiration of the one-week period, the division superintendent shall notify the school board of his decision to accept or reject the resignation. The school board, within two weeks, may reverse the decision of the division superintendent.

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

D. As soon after June 15 as the school budget shall have been approved by the appropriating body, the school board shall furnish each teacher a statement confirming continuation of employment, setting forth assignment and salary.

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

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

F. Within two weeks of the approval of the school budget by the appropriating body, but no later than ~~June~~ July 1, school boards shall notify all teachers who may be subject to a reduction in force due to a decrease in the school board's budget as approved by the appropriating body.

*G. If a school board implements a reduction in workforce pursuant to this section, such reduction shall not be made solely on the basis of seniority but must include consideration of, among other things, the performance evaluations of the teachers potentially affected by the reduction in workforce.*

#### **§ 22.1-305. Nonrenewal of contract of probationary teacher.**

A. Before a division superintendent recommends to the school board nonrenewal of the contract of a teacher who has not achieved continuing contract status, the division superintendent shall consider, among other things, the performance evaluations for such teacher required by § 22.1-303 and shall notify the teacher of the proposed recommendation. Upon written request of the teacher within five working days after receipt of such notice, the division superintendent or his designee shall orally provide the specific reasons, if any, for such recommendation, along with supporting documentation, including such performance evaluations, to the teacher and, if requested by the teacher, to his or her representative. Within ~~ten~~ 10 days after receiving such reasons, the teacher may request, by notification in writing to the division superintendent, a conference before the division superintendent. Upon such request, the division superintendent shall set a date for the conference, which shall be within ~~thirty~~ 30 days of the request, and shall give the teacher at least ~~fifteen~~ 15 days' notice of the time and place of the conference.

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

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

D. The division superintendent shall notify the teacher, in writing, of his intention with respect to the recommendation within ~~ten~~ 10 days after the conference.

E. In any case in which a teacher requests ~~a conference~~ *reasons for the recommendation* as provided in this section, written notice of nonrenewal of the contract by the school board must be given *either within 10 days after the time for requesting a conference has expired and the teacher has not made a timely request for a conference or, if a conference is requested, within thirty* ~~thirty~~ 30 days after the division superintendent notifies the teacher of his intention with respect to the recommendation and the provisions of § 22.1-304 requiring such notice on or before ~~April~~ June 15 shall not be applicable.

F. The conference shall be confidential and no written or oral communication of such conference shall be made to anyone other than the school board, in executive session, and employees of the school



division having an interest therein; however, both the teacher and the division superintendent, upon request, may provide the reasons for the nonrenewal to a potential employer of the teacher.

G. The provisions of this section shall be inapplicable when a decrease in enrollment or the abolition of a particular subject or reduction in the number of classes offered in a particular subject causes a reduction in the number of teachers; however, a statement to that effect shall be placed in the personnel file of each teacher whose contract is nonrenewed for any such reason.

H. The intent of this section is to provide an opportunity for a probationary teacher to discuss the reasons for nonrenewal with the division superintendent or his designee, 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 nonrenewal of the contract of a teacher who has not achieved continuing contract status nor shall the failure of the school board or the division superintendent to comply with any time requirement herein constitute a basis for continued employment of the teacher.

#### **§ 22.1-305.1. Mentor teacher programs.**

A. The Board of Education shall establish, from such funds as may be appropriated by the General Assembly, mentor teacher programs utilizing specially trained public school teachers as mentors to provide assistance and professional support to teachers entering the profession and to improve the performance of experienced teachers who are not performing at an acceptable level.

The Board shall issue guidelines for such mentor teacher programs and shall set criteria for beginning and experienced teacher participation, including self-referral, and the qualifications and training of mentor teachers. Such guidelines shall provide that the mentor programs be administered by local school boards, with the assistance of an advisory committee made up of teachers, *principals*, and ~~administrators~~ *supervisors*, and that mentors (i) be classroom teachers who have achieved continuing contract status and who work in the same building as the teachers they are assisting or be instructional personnel who are assigned solely as mentors; (ii) be assigned a limited number of teachers at ~~any one~~ *one* time; however, instructional personnel who are not assigned solely as mentors should not be assigned to more than four teachers at ~~any one~~ *one* time; and (iii) guide teachers in the program through demonstrations, observations, and consultations to promote instructional excellence. Local school boards shall strive to provide adequate release time for mentor teachers during the contract day.

B. The ~~Board~~ *local school board* shall serve as fiscal agent for the participating school boards in matters concerning the mentor teacher programs. The ~~Board~~ *Department of Education* shall allocate, from such funds as are appropriated, moneys to participating school divisions for the purpose of supporting such programs which shall include, but not be limited to, compensation for mentor teachers.

#### **§ 22.1-306. Definitions.**

As used in this article:

*"Business day" means any day that the relevant school board office is open.*

*"Day" means calendar days unless a different meaning is clearly expressed in this article. Whenever the last day for performing an act required by this article falls on a Saturday, Sunday, or legal holiday, the act may be performed on the next day that is not a Saturday, Sunday, or legal holiday.*

*"Dismissal" means the dismissal of any teacher during the term of such teacher's contract.*

*"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)~~ (1) establishment and revision of wages or salaries, position classifications or general benefits, ~~(ii)~~ (2) suspension of a teacher or nonrenewal of the contract of a teacher who has not achieved continuing contract status, ~~(iii)~~ (3) the establishment or contents of ordinances, statutes or personnel policies, procedures, rules and regulations, ~~(iv)~~ (4) failure to promote, ~~(v)~~ (5) discharge, layoff, or suspension from duties because of decrease in enrollment, decrease in enrollment or abolition of a particular subject or insufficient funding, ~~(vi)~~ (6) hiring, transfer, assignment, and retention of teachers within the school division, ~~(vii)~~ (7) suspension from duties in emergencies, ~~or (viii)~~ (8) the methods, means, and personnel by which the school division's operations are to be carried on, or (9) coaching or extracurricular activity sponsorship.*

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.

*"Dismissal" means the dismissal of any teacher during the term of such teacher's contract and the nonrenewal of the contract of a teacher on continuing contract.*

#### **§ 22.1-307. Dismissal of teacher; grounds.**

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

B. For the purposes of this article, "incompetency" may be construed to include, but shall not be limited to, consistent failure to meet the endorsement requirements for the position or ~~performance that is documented through evaluation to be consistently less than satisfactory one or more unsatisfactory performance evaluations.~~

**§ 22.1-309. Notice to teacher of recommendation of dismissal; school board not to consider merits during notice; superintendent required to provide reasons for recommendation upon request.**

In the event a division superintendent determines to recommend dismissal of any teacher ~~or the placing on probation of a teacher on continuing contract~~, written notice shall be sent to the teacher notifying him of the proposed dismissal ~~or placing on probation~~ and informing him that within ~~fifteen~~ *five business days* after receiving the notice the teacher may request a hearing before the school board ~~or, at the option of the local school board, a hearing officer appointed by 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~~ *five business day* period and thereafter until a hearing is held in accordance with the provisions ~~herein of this section~~, 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 in this section~~. 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 a teacher requests a hearing pursuant to § 22.1-311 ~~or § 22.1-312~~, the division superintendent shall provide, within ~~ten~~ *10* 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 ~~or probation~~. Within ~~ten~~ *10* 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 ~~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.

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

A. *Upon a timely request for a hearing pursuant to § 22.1-309, the school board or, at the option of the school board, a hearing officer appointed by the school board shall set a hearing within 15 days of the request and the teacher shall be given at least five days' written notice of the time and the place. The hearing before the school board, which shall be private unless the teacher requests a public one, must be set within 30 days of the request, and the teacher must be given at least 15 days' written notice of the time and place the hearing to be public.* At the hearing the teacher may appear with or without a representative and be heard, presenting testimony of witnesses and other evidence. The school board may hear a recommendation for dismissal and make a determination whether to make a recommendation to the Board of Education regarding the teacher's license at the same hearing or hold a separate hearing for each action.

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

C. *A record or recording of any hearing conducted pursuant to this section shall be made. The parties shall share the cost of the recording equally. In proceedings concerning grievances not related*

*to dismissal, the recording may be dispensed with entirely by mutual consent of the parties. In such proceedings, if the recording is not dispensed with, the two parties shall share the cost of the recording equally; if either party requests a transcript, that party shall bear the expense of its preparation. In cases of dismissal, the record or recording shall be preserved for a period of six months. If the school board requests that a transcript be made at any time prior to expiration of the six-month period, it shall be made and copies shall be furnished to both parties. The school board shall bear the cost of the transcription.*

*D. 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.*

**§ 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, ~~and 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 as soon as practicable and no more than 30 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.

C. In the case of a hearing before a ~~fact-finding panel~~ *hearing officer appointed by the school board*, the school board shall give the teacher its written decision ~~within as soon as practicable and no more than 30 days after the school board receives both the transcript of such hearing, if any, and the panel's findings of fact and recommendations receiving the record or recording of the hearing; however, should there be a further hearing before the school board, as hereafter provided, such decision shall be furnished the teacher within as soon as practicable and no more than 30 days after such further hearing.~~ The decision of the school board shall be reached after considering the transcript, if any, and the findings of fact and recommendations of the panel and such further evidence as the school board may receive at any further hearing.

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

D. In any case in which a further hearing by a school board is held after a hearing before a fact-finding panel, the school board shall consider at such further hearing the transcript, if any, the findings and recommendations of the fact-finding panel and such further evidence, including that of witnesses having testified before the panel, as the school board deems appropriate or as may be offered on behalf of the grievant or the respondent. A school board may initiate any such hearing upon written notice to the teacher and the division superintendent within 10 business days after the board receives the findings of fact and recommendations of the panel and any transcript of any panel hearing. Such notice shall specify each matter to be inquired into by the school board. In any case in which a teacher may initiate any such hearing, the teacher shall request such hearing in writing within 10 business days after receiving the findings of fact and recommendations of the panel and any transcript of the panel hearing. Any decision by the school board shall be based solely on the transcript, if any, the findings of fact and recommendations of the panel, and any evidence relevant to the issues of the original grievance adduced at the hearing in the presence of each party. Such hearing shall be conducted as a hearing by the school board as provided in § 22.1-311.

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

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

**§ 22.1-314. Decision of school board; issue of grievability; appeal.**

Decisions regarding whether or not a matter is grievable shall be made by the school board at the

request of the school division administration or grievant and such decision shall be made within 10 business days of such request. The school board shall reach its decision only after allowing the school division administration and the grievant opportunity to present written or oral arguments regarding grievability. The decision as to whether the arguments shall be written or oral shall be in the discretion of the school board. Decisions of the school board may be appealed to the circuit court having jurisdiction in the school division for a hearing on the issue of grievability.

Proceedings for review of the decision of the school board shall be instituted by filing a notice of appeal with the school board within 10 business days after the date of the decision and giving a copy thereof to all other parties. Within 10 business days thereafter, the school board shall transmit to the clerk of the court to which the appeal is taken a copy of its decision, a copy of the notice of appeal, and the exhibits. The failure of the school board to transmit the record within the time allowed shall not prejudice the rights of the grievant. The court, on motion of the grievant, may issue a writ of certiorari requiring the school board to transmit the record on or before a certain date. Within 10 business days of receipt by the clerk of such record, the court, sitting without a jury, shall hear the appeal on the record transmitted by the school board and such additional evidence as may be necessary to resolve any controversy as to the correctness of the record. The court, in its discretion, may receive such other evidence as the ends of justice require. The court may affirm the decision of the school board or may reverse or modify the decision. The decision of the court shall be rendered no later than the fifteenth day from the date of the conclusion of the hearing. Such determination of grievability shall be made subsequent to the reduction of the grievance to writing but prior to any ~~panel or school board~~ hearing or the right to such determination shall be deemed to have been waived.

**2. That §§ 22.1-299.3, 22.1-310, and 22.1-312 of the Code of Virginia are repealed.**