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HOUSE BILL NO. 1326

Offered January 8, 2020

Prefiled January 8, 2020

A BILL to amend and reenact §§ 22.1-307, 22.1-309, 22.1-311, and 22.1-313 of the Code of Virginia, relating to teachers; probation and dismissal.

Patron—Kory

Referred to Committee on Education

Be it enacted by the General Assembly of Virginia:

1. That §§ 22.1-307, 22.1-309, 22.1-311, and 22.1-313 of the Code of Virginia are amended and reenacted as follows:

§ 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 any administrative appeal provided by § 63.2-1526 have been exhausted. The fact of such finding, after all rights to any administrative 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 one of, more than one~~ unsatisfactory performance ~~evaluations~~ *evaluation, or one unsatisfactory performance evaluation coupled with a finding by the division superintendent that the teacher (i) exhibited a pattern of poor performance or (ii) failed to respond to efforts to improve his performance.*

§ 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 *that* a division superintendent determines to recommend dismissal of any teacher, written notice shall be sent to the teacher notifying him of the proposed dismissal and informing him that within ~~40~~ 15 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. During such ~~40-business-day~~ 15-business-day period and thereafter until a hearing is held in accordance with the provisions 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 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, the division superintendent shall provide, within 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. Within 10 days of the ~~request of the division superintendent~~ *opportunity to inspect and copy his personnel file and all other documents relied upon in reaching the decision to recommend dismissal*, 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, *if the division superintendent so requests*. 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. *All exchanges of documents pursuant to this section shall be completed and certified as completed at least five business days prior to a hearing before the school board or a hearing officer pursuant to § 22.1-311.*

For the purposes of this section, "personnel file" 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

59 the school board, a hearing officer appointed by the school board shall set a hearing within 15 30 days
60 of the request and the teacher shall be given at least five days' written notice of the time and the place.
61 The hearing shall be private unless the teacher requests the hearing to be public. At the hearing the
62 teacher may appear with or without a representative and be heard, presenting testimony of witnesses and
63 other evidence. The school board may hear a recommendation for dismissal and make a determination
64 whether to make a recommendation to the Board of Education regarding the teacher's license at the
65 same hearing or hold a separate hearing for each action.

66 B. Each school board may appoint an impartial hearing officer from outside the school division to
67 conduct hearings pursuant to this section. A hearing officer shall not have been involved in the
68 recommendation of dismissal as a witness or a representative. A hearing officer shall possess some
69 knowledge and expertise in public education and education law and be capable of presiding over an
70 administrative hearing. The hearing officer shall schedule and preside over such hearings and shall create
71 a record or recording of such proceedings. The hearing officer shall make a written recommendation to
72 the school board, a copy of which shall be provided to the teacher. The hearing officer shall transmit the
73 recommendation and the record or recording of the hearing to the school board as soon as practicable
74 and no more than 10 business days after the hearing. In the event of a hearing before a hearing officer,
75 the school board may make its decision upon the record or recording of such hearing, pursuant to
76 § 22.1-313, or the school board may elect to conduct a further hearing to receive additional evidence by
77 giving written notice of the time and place to the teacher and the division superintendent within 10
78 business days after the board receives the record or recording of the initial hearing. Such notice shall
79 also specify each matter to be inquired into by the school board.

80 C. A record or recording of any hearing conducted pursuant to this section shall be made. The
81 parties shall share the cost of the recording equally. In proceedings concerning grievances not related to
82 dismissal, the recording may be dispensed with entirely by mutual consent of the parties. In such
83 proceedings, if the recording is not dispensed with, the two parties shall share the cost of the recording
84 equally; if either party requests a transcript, that party shall bear the expense of its preparation. In cases
85 of dismissal, the record or recording shall be preserved for a period of six months. If the school board
86 requests that a transcript be made at any time prior to expiration of the six-month period, it shall be
87 made and copies shall be furnished to both parties. The school board shall bear the cost of the
88 transcription.

89 D. Witnesses who are employees of the school board shall be granted release time if the hearing is
90 held during the school day. The hearing shall be held at the school in which most witnesses work, if
91 feasible.

92 **§ 22.1-313. Decision of school board; generally.**

93 A. The school board shall retain its exclusive final authority over matters concerning employment
94 and supervision of its personnel, including dismissals ~~and~~, suspensions, *and placements on probation*.

95 B. In the case of a hearing before the school board, the school board shall give the teacher its
96 written decision as soon as practicable and no more than 30 days after the hearing.

97 C. In the case of a hearing before a hearing officer appointed by the school board, the school board
98 shall give the teacher its written decision as soon as practicable and no more than 30 days after
99 receiving the record or recording of the hearing; however, should there be a further hearing before the
100 school board, such decision shall be furnished the teacher as soon as practicable and no more than 30
101 days after such further hearing.

102 D. A teacher may be dismissed ~~or~~, suspended, *or placed on probation* by a majority of a quorum of
103 the school board.

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

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