| **Virginia Board of Education Agenda Item** | **Seal of the Commonwealth of Virginia** |
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# Agenda Item: C

## Date: June 28, 2018

### Title: First Review of Proposed Procedural Guidelines for Conducting Licensure Hearings

#### Presenters: Ms. Susan B. Williams, Assistant Attorney General, Office of the Attorney General

**Mrs. Patty S. Pitts, Assistant Superintendent, Division of Teacher Education and Licensure**

**Ms. Nancy Walsh, Coordinator of Professional Practices**

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## Purpose of Presentation:

Other initiative or requirement. Specify below:

Guidelines for use by the Superintendent’s Investigative Panel and the Board of Education in conducting licensure hearings.

## Executive Summary:

The Board of Education is responsible by law for promulgating regulations that prescribe the requirements for the licensure of teachers and other school personnel required to hold a license, including requirements for the denial, suspension, cancellation and revocation of such licenses.

The Board of Education is committed to providing an equitable and fair process that affords a license holder who is seeking license renewal or reinstatement or whose license is the subject of a petition for suspension or revocation adequate and timely notice of the proceedings and a meaningful opportunity to be heard. These proposed guidelines are intended to assist the parties and the decision makers in that process.

## Action Requested:

Action will be requested at a future meeting. Specify anticipated date below:

July 26, 2018

## Superintendent’s Recommendation:

The Superintendent of Public Instruction recommends the Board of Education receive the proposed guidelines for first review.

## Previous Review or Action:

Other. Specify below:

Preliminary review of first draft of proposed guidelines (no action taken) on April 25, 2018

## **Background Information and Statutory Authority:**

The Constitution of Virginia and the Code of Virginia provide authority for the Board of Education to promulgate Licensure Regulations for School Personnel.

Article VIII, Section 4 of the *Constitution of Virginia* states, in part, the following:

“The general supervision of the public school system shall be vested in a Board of Education….”

The Board of Education has the statutory authority to prescribe licensure requirements by regulation. These regulations shall include requirements for the denial, suspension, cancellation, revocation, and reinstatement of licensure. Section 22.1-298.1 of the *Code of Virginia*, states:

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

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 and procedures for the immediate and thorough investigation by the division superintendent or his designee of any complaint alleging that a license holder has engaged in conduct that may form the basis for the revocation of his license. At a minimum, such procedures for investigations contained in such regulations shall require (i) the division superintendent to petition for the revocation of the license upon completing such investigation and finding that there is reasonable cause to believe that the license holder has engaged in conduct that forms the basis for revocation of a license; (ii) the school board to proceed to a hearing on such petition for revocation within 90 days of the mailing of a copy of the petition to the license holder, unless the license holder requests the cancellation of his license in accordance with Board regulations; and (iii) the school board to provide a copy of the investigative file and such petition for revocation to the Superintendent of Public Instruction at the time that the hearing is scheduled. 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](http://law.lis.virginia.gov/vacode/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 administrative appeal provided by § [63.2-1526](http://law.lis.virginia.gov/vacode/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.

**See Attachments A and B to the Proposed Procedural Guidelines for Conducting Licensure Hearings for the pertinent *Licensure Regulations for School Personnel*, in effect and pending.**

## **Timetable for Further Review/Action:**

This item will be presented to the Board of Education for final review on July 26, 2018.

## Impact on Fiscal and Human Resources:

The administrative impact associated with these guidelines is expected to be minimal.

# Proposed Procedural Guidelines for Conducting Licensure Hearings

## REVISED JUNE 18, 2018

## Preamble

The Board of Education is responsible by law for promulgating regulations that prescribe the requirements for the licensure of teachers and other school personnel required to hold a license, including requirements for the denial, suspension, cancellation and revocation of such licenses. See *Licensure Regulations for School Personnel* (8VAC20-22-10 et seq.).

The Board of Education is committed to providing an equitable and fair process that affords a license holder who is seeking license renewal **or reinstatement** or whose license is the subject of a petition for suspension or revocation adequate and timely notice of the proceedings and a meaningful opportunity to be heard. These guidelines are intended to assist the parties and the decision makers in that process.

## Policies and Procedures of General Applicability

For purposes of these guidelines, the term “petitioner” is used to refer to the local school board representatives if the petition is initiated by a local school board, or to Virginia Department of Education representatives if the petition is initiated ~~by~~ **on motion of** the Board of Education or the action involves the renewal **or reinstatement** of a license.

For purposes of these guidelines, the terms “party” and “parties” are used to refer to the license holder and the petitioner.

A license holder shall have the right to appear in person at the hearings held by the Superintendent’s Investigative Panel (Panel) and the Board of Education (Board) unless he/she is confined in jail or a penal institution.

A license holder shall have the right, at his/her own expense, to be represented by an attorney or other representative at the Panel hearing and at the hearing conducted by the Board.

The petitioner has the burden of proving that adverse action against a license is appropriate. Adverse action includes ~~non-renewal~~ **denial of renewal or reinstatement**, or revocation or suspension of a ~~valid~~ license.

The standard of proof shall be a preponderance of the evidence.

The hearing before the Panel shall be recorded, and, upon written request, the license holder shall be provided a transcript of the hearing at his/her own expense. Any proceeding before the Board shall be recorded, and, upon written request, the license holder shall be provided a transcript of the proceeding at no charge. **A license holder may arrange for and have a court reporter present at the Panel hearing or Board hearing at his/her own expense.**

Hearings will proceed on the date scheduled unless continued for good cause on a party’s request, or to accommodate necessary scheduling changes for the Board or Panel. Either party may request a continuance of the Panel or Board hearing date for good cause to either body’s next regularly scheduled hearing date. Requests for continuance shall be submitted in writing to the Virginia Department of Education (VDOE) **Division of Teacher Education and Licensure** as soon as practicable in advance of the hearing, or, if made by phone due to an emergency, confirmed in writing as soon as practicable. Reasonable requests shall be granted for good cause shown and in consideration of the regular schedules of the Panel and Board.

All exhibits, documents and other evidence that ~~is~~ **are** to be used or referenced at the hearing shall be furnished to the VDOE **Division of Teacher Education and Licensure** no later than **ten (10) business days prior** to the date of the Panel hearing and no later than **fifteen (15) business days prior** to the date of the Board hearing.

**The VDOE Division of Teacher Education and Licensure shall ensure that the license holder receives all exhibits, documents and other evidence that will be used or referenced during the Panel hearing or Board hearing prior to the date of the respective hearing. Such materials shall be mailed to the license holder no later than the date upon which they are mailed to the members of the Panel or Board.**

A list of all witnesses shall be furnished to the VDOE **Division of Teacher Education and Licensure** no later than **five (5) business days prior** to the date of the Panel hearing and no later than **ten (10) business days prior** to the date of the Board hearing.

~~Text-based materials, including documents, transcripts and legal authority, must be furnished in their entirety. Excerpts will not be accepted.~~

**While excerpts of text-based materials, including documents, transcripts and legal authority, may be presented to the Panel and Board, at least one copy of any such materials in their entirety shall be submitted at the time of the hearing in order to assist the Panel or Board in weighing the relevancy and materiality of such evidence. Such copy of the materials in their entirety shall become part of the record.**

The VDOE **Division of Teacher Education and Licensure** will add page numbers to the pages and provide complete copies of all such submissions to the Panel and Board members and to the license holder or license holder’s representative and, if applicable, to the local school board representative.

During the Panel and Board hearings, the speaker shall indicate the page number provided by the VDOE **Division of Teacher Education and Licensure** when making reference to or presenting any submitted materials.

Either party may prepare a hearing binder that contains submitted materials for use by such party or such party’s witnesses during a hearing. However, such binder will not be provided to members of the Panel or the Board. Instead, members of the Panel and Board shall rely on the page-numbered copies provided to them by the VDOE **Division of Teacher Education and Licensure** in advance of their respective hearings.

In accordance with the Family Educational Rights and Privacy Act (FERPA), ~~the parties~~ **a local school division** should not submit documents or other materials containing personally identifiable information **from educational records** about any student or former student to whom FERPA applies. In the event that submissions contain information **from educational records** protected by FERPA that has not been redacted, the VDOE **Division of Teacher Education and Licensure** may return the materials to the ~~party~~ **local school division** for redaction and continue the hearing to the next scheduled Panel or Board hearing date.

**This provision shall not be construed to require the redaction of personally identifiable information about any student or former student that is contained in the investigative file that is submitted to the Superintendent of Public Instruction by a local school division.**

**Effective July 1, 2018, directory information, as defined by the FERPA, and which may include a student's name, sex, address, telephone listing, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height as a member of an athletic team, dates of attendance, degrees and awards received, and other similar information contained in educational records, may be disclosed in accordance with federal and state law and regulations provided that the school has given notice to the parent or eligible student of (i) the types of information that the school has designated as directory information; (ii) the right of the parent or eligible student to refuse the designation of any or all of the types of information about the student as directory information, and (iii) the period of time within which the parent or eligible student must notify the school in writing that he does not want any or all of the types of information about the student designated as directory information. However, no school shall disclose the address, telephone number, or email address of a student pursuant to 34 C.F.R. § 99.31(a)(11) of FERPA or the Virginia Freedom of Information Act unless the parent or eligible student has affirmatively consented in writing to such disclosure.**

Witness participation is voluntary. In addition, witnesses are not required to submit to interviews or talk with the other party or its representatives.

Ex parte communication that concerns a pending petition or proceeding is prohibited between the license holder/license holder’s representative or the petitioner and any voting member of the Panel or the Board.

## Superintendent’s Investigative Panel Hearing

A chair and vice-chair shall be designated by the Superintendent of Public Instruction. The Superintendent of Public Instruction shall not participate in hearings conducted by the Panel.

The chair or, in his/her absence, the vice-chair will preside over hearings conducted by the Panel. The chair shall convene the Panel hearing, state its purpose, and introduce the parties to the proceeding.

The chair shall determine the appropriate response to requests and/or objections pertaining to the conduct of the hearing and the matters to be considered. The chair may address an objection by ruling on it or by noting it in the record. In so ruling, and in conducting the hearing, the chair shall base his/her determinations on the probative value, materiality, and relevance of the matter to the purpose(s) of the hearing.

The chair shall administer the following oath to all persons who will testify: "Do you swear or affirm that the testimony you will give is the truth?"

Upon the request of either party, the chair may exclude from the hearing room the witnesses not under examination at the time, except that the license holder and his/her representative shall not be excluded.

In conducting a hearing, the Panel shall not be bound by common law or statutory rules of evidence or by technical or formal rules of procedure.

The chair may exclude irrelevant, immaterial or unduly repetitious evidence, including duplicative testimony by multiple witnesses, and may limit the length of the hearing, oral argument, and/or testimony in light of their relevance in relation to the matter(s) to be considered by the Panel.

At its discretion, the Panel may ask questions of the license holder, local school board representative, ~~the Superintendent of Public Instruction~~ and VDOE employees, including VDOE **Division of Teacher Education and Licensure** staff.

Testimony or evidence containing hearsay, if presented to the Panel, shall not form the sole basis for the determination of facts by the Panel.

The order of procedures shall be as follows:

1. Opening statement by the petitioner
2. Opening statement by license holder or license holder’s representative
3. Presentation of the petitioner’s evidence
4. Questions by Panel members
5. Cross-examination of witnesses by license holder or license holder’s representative
6. Presentation of license holder’s evidence
7. Questions by Panel members
8. Cross-examination of witnesses by the petitioner
9. Rebuttal by license holder or license holder’s representative, as necessary and if requested
10. Closing argument by the petitioner
11. Closing argument by license holder or license holder’s representative
12. Deliberation by the Panel

Either party may waive the opportunity to make an opening statement or a closing argument or to call or cross-examine a witness.

At the conclusion of the hearing, the members of the Panel will deliberate and make written findings of fact, conclusions of law related to those facts, and a recommendation to the Superintendent of Public Instruction.

Panel members shall be joined in their deliberations by an assistant attorney general whose role is to provide legal advice and serve as counsel to the Panel. An assistant attorney general who is present for the deliberations of the Panel shall not be present for the deliberations of the Board in any subsequent hearing on the same licensure action.

The presence of VDOE staff in the deliberations of the Panel will vary depending on whether the petition/action against the license holder was initiated by a local school board or ~~by~~ **on motion of** the Board of Education.

If the petition was initiated by a local school board, its representative(s) are expected to attend the Panel’s hearing and to fulfill the role of petitioner in the proceedings, as set forth above in the Panel’s order of proceedings. A VDOE staff person shall be present for the deliberations of the Panel.

If the petition was initiated by the Board of Education, a VDOE staff person shall attend the Panel’s hearing in order to fulfill the role of petitioner in the proceedings, as set forth above in the Panel’s order of proceedings. ~~Another~~ **A different** VDOE staff person shall be present for the deliberations of the Panel.

**If the Superintendent of Public Instruction determines that he/she is unable to act impartially as a result of a personal, professional, or financial relationship with a license holder, he/she shall recuse him/herself from reviewing the record and determining whether to initiate a petition on behalf of the Board. Under such circumstances, the Deputy Superintendent is authorized to act on behalf of the Board of Education to review the record and decide whether to initiate a petition, and, in such circumstances, the Superintendent of Public Instruction shall not be present at any hearing on the matter.**

A VDOE staff person who is present for the deliberations of the Panel shall not be present for the deliberations of the Board in any subsequent hearing on the same licensure action.

However, a VDOE staff person who fulfills the role of petitioner at a Panel hearing may report the Panel’s findings of fact, conclusions of law, and **recommendation as well as** the Superintendent of Public Instruction’s recommendation to the Board of Education at the Board’s hearing on the same licensure action.

The Panel’s written findings of fact, conclusions of law, and recommendation, along with the agency record pertaining to the licensure action, shall be provided to the Superintendent of Public Instruction who will independently review the materials. During his/her review, the Superintendent of Public Instruction may ask questions of VDOE employees who were not present for the Panel’s deliberations.

After such review, the Superintendent will either ~~adopt~~ **support** the recommendation of the Panel in writing or make a different recommendation, which shall be in writing and include a statement of the factual, legal, or other basis for varying from the recommendation of the Panel.

The following documents will be provided by the VDOE **Division of Teacher Education and Licensure** to the Board:

1. Agency record pertaining to the licensure action;
2. The Panel’s written findings of fact, conclusions of law, and recommendation; and
3. The Superintendent’s written recommendation. If such recommendation differs from that of the Panel, the Superintendent will provide a written statement supporting his/her ~~reasons~~ **recommendation**.

## Board of Education Hearing

The president of the Board or, in his/her absence, the vice-president of the Board shall preside over hearings conducted by the Board, and the Superintendent of Public Instruction shall participate in such hearings.

The president shall convene the Board’s hearing, state its purpose, and introduce the parties to the proceeding.

Matters relevant and material to the Board’s review shall be limited to the Panel’s findings of fact, conclusions of law, and recommendation and consideration of the recommendation of the Superintendent of Public Instruction.

**The Board shall consider the recommendation of the Superintendent of Public Instruction and such relevant and material evidence as the license holder may desire to present at the hearing.**

In extraordinary circumstances, the Board may consider additional **inculpatory** evidence that was not available to the Panel. An example is evidence of a DUI conviction that occurred after the Panel hearing and before the Board hearing when consumption of alcohol is relevant to the matter at issue.

The president shall determine the appropriate response to requests and/or objections pertaining to the conduct of the hearing and the matters to be considered. The president may address an objection by ruling on it or by noting it in the record. In so ruling, and in conducting the hearing, the president shall base his/her determinations on the probative value, materiality, and relevance of the matter to the purpose(s) of the hearing.

The president shall administer the following oath to all persons who will testify: "Do you swear or affirm that the testimony you will give is the truth?"

Upon the request of either party, the president may exclude from the hearing room the witnesses not under examination at the time, except that the license holder and his/her representative shall not be excluded.

In conducting a hearing, the Board shall not be bound by common law or statutory rules of evidence or by technical or formal rules of procedure.

The president may exclude irrelevant, immaterial, or unduly repetitious evidence, including duplicative testimony by multiple witnesses, and may limit the length of the hearing, oral argument, and/or testimony in light of their relevance in relation to the matter(s) to be considered by the Board.

At its discretion, the Board may ask questions of the license holder, local school board representative, the Superintendent of Public Instruction, and VDOE employees, including VDOE **Division of Teacher Education and Licensure** staff.

In hearings on petitions initiated by a local school board, the order of procedures shall be as follows:

1. Presentation by VDOE staff person of the Panel’s findings of fact, conclusions of law and the Superintendent of Public Instruction’s recommendation
2. Opening statement by local school board representative and presentation of local school board’s relevant and material evidence
3. Opening statement by license holder or license holder’s representative and presentation of license holder’s relevant and material evidence
4. Questions by Board of Education members
5. Closing argument by local school board representative
6. Closing argument by license holder or license holder’s representative
7. Deliberation by the Board of Education

A license holder or license holder’s representative or local school board representative may waive the opportunity to make an opening statement or a closing argument or to present evidence.

In hearings on petitions initiated by a local school board, neither the license holder/license holder’s representative nor the local school board representative is required to attend the Board’s hearing. If both parties elect not to attend the Board’s hearing, the Board will receive the report of the Panel’s findings of fact, conclusions of law, and **recommendation as well as** the Superintendent of Public Instruction’s recommendation and commence with ~~their~~ **its** deliberations.

In hearings on petitions initiated by the Board of Education, the order of procedures shall be as follows:

1. Presentation by VDOE staff person of the Panel’s findings of fact, conclusions of law,and **recommendation as well as** the Superintendent of Public Instruction’s recommendation
2. Opening statement by license holder or license holder’s representative and presentation of license holder’s relevant and material evidence
3. Questions by Board members
4. Closing argument by license holder or license holder’s representative
5. Deliberation by the Board

A license holder or license holder’s representative may waive the opportunity to make an opening statement or a closing argument or to present evidence.

In hearings on petitions initiated by the Board of Education, a license holder is not required to attend the Board’s hearing or send his/her representative to the hearing. If the license holder elects not to attend the Board’s hearing or send a representative, the Board will receive the report of the Panel’s findings of fact, conclusions of law, and **recommendation as well as** the Superintendent of Public Instruction’s recommendation and commence with ~~their~~ **its** deliberations.

At the conclusion of the hearing, the members of the Board of Education shall deliberate in order to consider the Panel’s findings of fact, conclusions of law, and **recommendation as well as** the recommendation of the Superintendent of Public Instruction.

**In hearings on petitions initiated by a local school board,** Board members shall be joined in their deliberations by the Superintendent of Public Instruction, a VDOE staff person, and an assistant attorney general whose role is to provide legal advice and serve as counsel to the Board.

**In hearings on petitions initiated on motion of the Board of Education, Board members shall be joined in their deliberations by a VDOE staff person and an assistant attorney general whose role is to provide legal advice and serve as counsel to the Board.**

An assistant attorney general who was present for the deliberations of the Panel shall not be present for the deliberations of the Board in any subsequent hearing on the same licensure action.

A VDOE staff person who ~~is~~ **was** present for the deliberations of the Panel shall not be present for the deliberations of the Board in any subsequent hearing on the same licensure action.

However, a VDOE staff person who ~~is~~ **was** present for the deliberations of the Panel may report the Panel’s findings of fact, conclusions of law, and **recommendation as well as** the Superintendent of Public Instruction’s recommendation to the Board of Education at the Board’s hearing on the same licensure action.

In addition, a VDOE staff person who fulfills the role of petitioner at a Panel hearing may report the Panel’s findings of fact, conclusions of law, and **recommendation as well as** the Superintendent of Public Instruction’s recommendation to the Board of Education at the Board’s hearing on the same licensure action.

The Board of Education will vote in an open meeting on what adverse action, if any, shall be taken ~~against each license~~. If the Board determines that an adverse **licensure** action is appropriate ~~against a particular license~~, the Board will issue an order setting forth such action, which shall be signed by the president of the Board of Education.