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

# Date: November 15, 2018

### Title: Final 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 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 (Attachment A) are intended to assist the parties and the decision makers in that process.

## Action Requested:

Final review: Action requested at this meeting.

## Superintendent’s Recommendation:

The Superintendent of Public Instruction recommends the Board of Education approve the proposed Procedural Guidelines for Conducting Licensure Hearings to become effective January 1, 2019.

## Rational for Action:

The Board of Education is committed to providing an equitable and fair process that affords a license holder who is seeking license renewal 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.

**Previous Review or Action:**

Previous review and action. Specify date and action taken below:

Date: April 25, 2018

Action: Preliminary review of first draft of proposed Procedural Guidelines for Conducting Licensure Hearings (no action taken)

Date: June 28, 2018

Action: First review of proposed Procedural Guidelines for Conducting Licensure Hearings (no action taken)

Date: July 26, 2018

Action: Second review of proposed Procedural Guidelines for Conducting Licensure Hearings (no action taken)

Date: September 20, 2018

Action: The Board of Education postponed action on this item until October 2018.

Date: October 18, 2018

Action: The Board of Education postponed action on this item until November 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.

Refer to Attachment B to review the pertinent sections of the current *Licensure Regulations for School Personnel*.

During the September 17, 2018, meeting of the Advisory Board on Teacher Education and Licensure, the members reviewed the proposed Guidelines. During the public comment period, Catherine Lee of the Virginia Education Association presented its recommendations for revisions. After discussion of the proposed Guidelines, a motion was made and passed by a 10-4 vote to recommend to the Board of Education the revisions proposed by the Virginia Education Association (Appendix C) to the Guidelines.

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

Upon approval by the Board of Education, the Guidelines will be disseminated to school divisions by a Superintendent’s Memorandum and posted on the Department of Education’s website.

## Impact on Fiscal and Human Resources:

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

**ATTACHMENT A**

#### Proposed Procedural Guidelines for Conducting Licensure Hearings

#### REVISED SEPTEMBER 14, 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* (8VAC20-23-10 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 on motion ofthe Board of Education or the **~~action~~ matter** 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 to jail or a penal institution.

**A license holder may waive his/her right to a hearing before the Panel and request that the licensure matter go directly to the Board for a hearing.**

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 denial of renewal or reinstatement, or revocation or suspension of a 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.

**Parties shall endeavor to furnish** all exhibits, documents, and other evidence that 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.

**Parties shall endeavor to furnish** 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.

While excerpts of text-based materials, including documents, transcripts, and legal authority, may be presented to the Panel and Board, **any member of either body may request that the license holder provide at least one copy of any such materials in their entirety at the time of the hearing. The purpose of providing a copy of such materials in their entirety is to** assist the Panel or Board in weighing the relevancy and materiality of such evidence. **If provided,** 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.

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.

**Superintendent’s Investigative Panel Hearing**

A chair and vice-chair **of the Panel** 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. **If both the chair and vice-chair are absent, another member of the Panel may preside over the hearing and fulfill the responsibilities of the chair.**

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, **petitioner, and any witnesses who participate in the hearing.** **~~local school board representative 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’s recommendation to the Superintendent.

The order of ~~procedures~~ **proceedings** 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~~ shall** **deliberate in order to consider the relevant and material evidence presented by the license holder and petitioner and to** make **~~written findings of fact, conclusions of law related to those facts, and~~** a recommendation to the Superintendent of Public Instruction as to what adverse action, if any, should be taken by the Board of Education.

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~~ matter**.

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 on motion ofthe 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, **whose role is to document the Panel’s recommendation and reasoning and to acquire the information necessary to prepare a written summary of the proceedings,** 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. A different VDOE staff person, **whose role is to document the Panel’s recommendation and reasoning and to acquire the information necessary to prepare a written summary of the proceedings,** shall be present for the deliberations of the Panel.

~~However, a~~ **The** 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 and **reasoning** 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~~ matter**.

**~~The Panel’s written findings of fact, conclusions of law, and recommendation~~**~~,~~ **The VDOE staff person’s written summary of the Panel’s proceedings, including the Panel’s recommendation and reasoning,** along with the agency record pertaining to the licensure **~~action~~ matter**, 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 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. **VDOE staff person’s written summary of the Panel’s proceedings;**
2. Agency record pertaining to the licensure **~~action~~ matter**;
3. The Panel’s **~~written findings of fact, conclusions of law, and~~** **recommendation and reasoning**; and
4. The Superintendent’s **~~written~~** recommendation. If such recommendation differs from that of the Panel, the Superintendent will provide a written statement supporting his/her 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. **If both the president and vice-president are absent, another member of the Board may preside over the hearing and fulfill the responsibilities of the president.**

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 either did not exist at the time of the Panel’s hearing or was discovered subsequent to the hearing and was therefore not available for presentation to the Panel.** For purposes of these guidelines, inculpatory evidence means that which tends to incriminate the license holder or to establish the license holder’s fault or guilt with respect to a matter at issue in the proceedings. **~~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, **petitioner, and any witnesses who participate in the hearing.** **~~local school board representative 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~~**

**The order of proceedings 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 Board members**
5. **Cross-examination of witnesses by license holder or license holder’s representative**
6. **Presentation of license holder’s evidence**
7. **Questions by Board 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 Board**

A license holder or license holder’s representative or **a petitioner** 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 relevant and material evidence presented by the license holder and petitioner** and the Panel’s **~~findings of fact, conclusions of law, and~~** recommendation **and reasoning** 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.~~**

**The Superintendent of Public Instruction shall not participate in the Board’s deliberations.**

**VDOE staff shall not participate in the Board’s deliberations.**

**Board members shall be joined in their deliberations by an assistant attorney general whose role is to provide legal advice, serve as counsel to the Board, and assist the Board in preparing the order that sets forth its decision.**

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~~ matter**.

**If the petition was initiated by a local school board, its representative(s) are expected to attend the Board’s hearing and to fulfill the role of petitioner in the proceedings, as set forth above in the Board’s order of proceedings.**

**~~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. **~~If the Board determines that an adverse licensure action is appropriate against a particular license, the~~** The Board shall issue an order setting forth **~~such action~~ its decision**, which shall be signed by the president of the Board of Education.

# ATTACHMENT B

## Excerpt from the Licensure Regulations for School Personnel

## *Effective August 23, 2018*

### 8VAC20-23-720. Revocation.

Part VII. Revocation, Cancellation, Suspension, Denial, and Reinstatement of Licenses

A. A license issued by the Virginia Board of Education may be revoked for the following reasons:

1. Obtaining or attempting to obtain a license by fraudulent means or through misrepresentation of material facts;

2. Falsification of school records, documents, statistics, or reports;

3. Conviction of any felony;

4. Conviction of any misdemeanor involving moral turpitude;

5. Conviction of any misdemeanor involving a student or minor;

6. Conviction of any misdemeanor involving drugs (not alcohol);

7. Conduct with direct and detrimental effect on the health, welfare, discipline, or morale of a student or minor;

8. Misapplication of or failure to account for school funds or other school properties with which the licensee has been entrusted;

9. Acts related to secure mandatory tests as specified in subsection A of § [22.1-292.1](https://law.lis.virginia.gov/vacode/22.1-292.1/) of the Code of Virginia;

10. Knowingly and willfully with the intent to compromise the outcome of an athletic competition procure, sell, or administer anabolic steroids or cause such drugs to be procured, sold, or administered to a student who is a member of a school athletic team, or fail to report the use of such drugs by a student to the school principal and division superintendent as required by clause (iii) of subsection A of § [22.1-279.3:1](https://law.lis.virginia.gov/vacode/22.1-279.3%3A1/) of the Code of Virginia. Any person whose license is suspended or revoked by the board pursuant to this section shall be ineligible for three school years for employment in the public schools of the Commonwealth;

11. Revocation, suspension, surrender, cancellation, invalidation, or denial of, or other adverse action against, a teaching, administrator, pupil personnel services, or other education-related certificate or license by another state, territory, or country; or denial of an application for any such certificate or license;

12. Founded case of child abuse or neglect after all administrative appeals have been exhausted;

13. Notification of dismissal or resignation pursuant to subsection F of § [22.1-313](https://law.lis.virginia.gov/vacode/22.1-313/) of the Code of Virginia; or

14. Other good and just cause in the best interest of the public schools of the Commonwealth of Virginia.

B. Procedures.

1. A complaint may be filed by anyone, but it shall be the duty of a division superintendent, principal, or other responsible school employee to file a complaint in any case in which he has knowledge that a basis for the revocation of a license exists, as set forth in subsection A of this section. The person making the complaint shall submit the complaint in writing to the appropriate division superintendent. If the subject of the complaint is the division superintendent, the person making the complaint may submit the complaint to the chair of the local school board.

2. Upon receipt of the complaint against the holder of a license, a division superintendent or his duly authorized representative shall immediately and thoroughly investigate the complaint. If, on the basis of such investigation, the division superintendent finds the complaint to be without merit, he shall so notify the complaining party or parties in writing and then close his file on the matter. This action shall be final unless the local school board, on its own motion, votes to proceed to a hearing on the complaint.

C. Petition for revocation. Should the division superintendent or local school board conclude that there is reasonable cause to believe that a basis for revocation of the license exists, the license holder shall be notified of the complaint by a written petition for revocation of a license signed by the division superintendent. A copy of such petition shall be sent by certified mail, return receipt requested, to the license holder's last known address.

D. Form of petition. The petition for the revocation of a license shall set forth:

1. The name and last known address of the person against whom the petition is being filed;

2. The type of license and the license number held by the person against whom the petition is being filed;

3. The basis for revocation and the specific underlying alleged actions;

4. A statement of rights of the person against whom the petition is being filed. The statement of rights shall notify the person that any adverse action against a license, including revocation, will be reported to the division superintendents in Virginia and, through a national clearinghouse, to chief state school officers of the other states and territories of the United States. The statement also shall include notification to the person of the right to cancel the license if he chooses not to contest the allegations in the petition. The statement shall notify the individual that he shall receive a notice of cancellation that will include the statement: "The license holder voluntarily returned the license in response to a petition for revocation." The individual also shall be notified that the cancellation of the license will be reported to division superintendents in Virginia and, through a national clearinghouse, to chief state school officers of the other states and territories of the United States; and

5. Any other pertinent information.

E. Filing of petition. The original petition shall be entered in the files of the local school board where the license holder is or was last employed.

F. Response to petition. The license holder shall present his written answer to the petition, if any, within 14 days of delivery or attempted delivery of the petition as certified by the United States Postal Service.

1. If the license holder does not wish to contest the allegations in the petition, he may request cancellation of the license by submitting a written, signed statement requesting cancellation in response to a petition for revocation. The division superintendent shall forward the request for cancellation along with the petition for revocation to the Superintendent of Public Instruction within 14 days of receipt. The Superintendent of Public Instruction shall cancel the license and send a notice of cancellation to the person by certified mail within 14 days of receipt of the request for cancellation.

2. If the license holder files a written answer admitting or denying the allegations in the petition or fails to file a written answer within 14 days of delivery or attempted delivery of the petition, as certified by the United States Postal Service, the local school board shall proceed to a hearing within 90 days of mailing the petition to the license holder and provide the Superintendent of Public Instruction a copy of the petition and investigative file at the time the local school board hearing is scheduled. The local school board shall provide a hearing at the time and place of its regular meeting or at such other reasonable time and place it may specify. The license holder or his representative, if any, shall be given at least 14 days' notice of the hearing.

3. At the hearing, the local school board shall receive the recommendation of the division superintendent and then either deny the petition or recommend license revocation or suspension. A decision to deny the petition shall be final, except as specified in subsection G of this section, and the investigative file on the petition shall be closed and maintained as a separate file. Any record or material relating to the allegations in the petition shall be placed in the investigative file. Should the local school board recommend the revocation or suspension of a license, the division superintendent shall forward the recommendation, petition, and investigative file to the Superintendent of Public Instruction within 14 days.

G. Revocation on motion of the Virginia Board of Education. The Virginia Board of Education reserves the right to act directly to revoke a license when the Virginia Board of Education has reasonable cause to believe that subsection A of this section is applicable. The Superintendent of Public Instruction may send a petition for revocation to the license holder as provided by subsection D of this section. The license holder shall have the opportunity to present his written answer, if any, to the petition within 14 days of delivery or attempted delivery of the petition, as certified by the United States Postal Service.

1. If the license holder does not wish to contest the allegations in the petition, he may request the cancellation of the license by submitting a written, signed statement requesting cancellation in response to a petition for revocation. The Superintendent of Public Instruction shall cancel the license and send a notice of cancellation to the person by certified mail within 14 day of receipt of the request for cancellation.

2. If the license holder files a written answer admitting the allegations in the petition or fails to file a written answer within 14 days of delivery or attempted delivery of the petition, as certified by the United States Postal Service, the petition shall be forwarded to the Virginia Board of Education for action. No revocation will be ordered without the involved license holder being given the opportunity to appear at a hearing specified in [8VAC20-23-780](https://law.lis.virginia.gov/admincode/title8/agency20/chapter23/section780/) C.

3. If the license holder timely files his written answer denying the allegations in the petition, the Superintendent of Public Instruction shall schedule a hearing with the investigative panel provided in [8VAC20-23-780](https://law.lis.virginia.gov/admincode/title8/agency20/chapter23/section780/) A. The license holder or his representative, if any, shall be given at least 14 days' notice of the hearing. The investigative panel shall take action on the petition as specified in [8VAC20-23-780](https://law.lis.virginia.gov/admincode/title8/agency20/chapter23/section780/) A. No revocation will be ordered without the involved license holder being given the opportunity to appear at a hearing specified in [8VAC20-23-780](https://law.lis.virginia.gov/admincode/title8/agency20/chapter23/section780/) C.

H. Reinstatement of license. A license that has been revoked may be reinstated by the Virginia Board of Education after five years if the board is satisfied that reinstatement is in the best interest of the public schools of the Commonwealth of Virginia. The individual seeking reinstatement shall submit a written request and completed application to the board. Notification to all appropriate parties will be communicated in writing by the Virginia Department of Education.

Statutory Authority

§§ [22.1-298.1](https://law.lis.virginia.gov/vacode/22.1-298.1/) and [22.1-299](https://law.lis.virginia.gov/vacode/22.1-299/) of the Code of Virginia.

Historical Notes

Derived from [Volume 34, Issue 24](http://register.dls.virginia.gov/toc.aspx?voliss=34:24), eff. August 23, 2018.

### 8VAC20-23-730. Cancellation.

A. A license may be canceled by the voluntary return of the license by the license holder in response to a petition for revocation or suspension or pursuant to a court order. Reasons for cancellation are the same as those listed under [8VAC20-23-720](https://law.lis.virginia.gov/admincode/title8/agency20/chapter23/section720/) A.

B. The individual may voluntarily return the license to the division superintendent or the Superintendent of Public Instruction with a written, signed statement requesting cancellation. The individual shall acknowledge in the request that he understands that the notice of cancellation will include the statement: "The license holder voluntarily surrendered his teaching license and requested cancellation. Reasons for cancellation are the same as those for revocation." The individual shall also acknowledge that he understands that the notice of cancellation will include the statement: "The license holder voluntarily surrendered the license in response to a petition for revocation or suspension or a court order." The individual also shall acknowledge that he understands that the cancellation of the license will be reported to division superintendents in Virginia and, through a national clearinghouse, to chief state school officers of the other states and territories of the United States. The division superintendent shall forward any request for cancellation and, if applicable, the petition for revocation or suspension to the Superintendent of Public Instruction within 14 days of receipt. The Superintendent of Public Instruction shall cancel the license and send the person a notice of cancellation by certified mail within 14 days of receipt of the request for cancellation.

C. A license that has been canceled may be reinstated by the Virginia Board of Education if the board is satisfied that reinstatement is in the best interest of the public schools of the Commonwealth of Virginia. The individual seeking reinstatement shall submit a written request and completed application to the board. Notification to all appropriate parties will be communicated in writing by the Virginia Department of Education.

Statutory Authority

§§ [22.1-298.1](https://law.lis.virginia.gov/vacode/22.1-298.1/) and [22.1-299](https://law.lis.virginia.gov/vacode/22.1-299/) of the Code of Virginia.

Historical Notes

Derived from [Volume 34, Issue 24](http://register.dls.virginia.gov/toc.aspx?voliss=34:24), eff. August 23, 2018.

### 8VAC20-23-740. Suspension.

A. A license may be suspended for the following reasons:

1. Physical, mental, or emotional incapacity as shown by a competent medical authority;

2. Incompetence or neglect of duty;

3. Failure or refusal to comply with school laws and regulations, including willful violation of contractual obligations;

4. Acts related to secure mandatory tests as specified in subsection A of § [22.1-292.1](https://law.lis.virginia.gov/vacode/22.1-292.1/) of the Code of Virginia;

5. Knowingly and willfully with the intent to compromise the outcome of an athletic competition procure, sell, or administer anabolic steroids or cause such drugs to be procured, sold, or administered to a student who is a member of a school athletic team, or fail to report the use of such drugs by a student to the school principal and division superintendent as required by clause (iii) of subsection A of § [22.1-279.3:1](https://law.lis.virginia.gov/vacode/22.1-279.3%3A1/) of the Code of Virginia. Any person whose license is suspended or revoked by the board pursuant to this section shall be ineligible for three school years for employment in the public schools of the Commonwealth; or

6. Other good and just cause in the best interest of the public schools of the Commonwealth of Virginia.

B. Procedures.

1. A complaint may be filed by anyone, but it shall be the duty of a division superintendent, principal, or other responsible school employee to file a complaint in any case in which he has knowledge that a basis for suspension exists, as set forth in subsection A of this section. The person making the complaint shall submit the complaint in writing to the appropriate division superintendent. If the subject of the complaint is the division superintendent, the person making the complaint may submit the complaint to the chair of the local school board.

2. Upon receipt of the complaint against the holder of a license, a division superintendent or his duly authorized representative shall immediately and thoroughly investigate the complaint. If, on the basis of such investigation, the division superintendent finds the complaint to be without merit, he shall so notify the complaining party or parties in writing and then close his file on the matter. This action shall be final unless the local school board on its own motion votes to proceed to a hearing on the complaint.

C. Petition for suspension. Should the division superintendent or local school board conclude that there is reasonable cause to believe that a basis for suspension of the license exists, the license holder shall be notified of the complaint by a written petition for suspension of a license signed by the division superintendent. A copy of such petition shall be sent by certified mail, return receipt requested, to the license holder's last known address.

D. Form of petition. The petition for the suspension of a license shall set forth:

1. The name and last known address of the person against whom the petition is being filed;

2. The type of license and the license number held by the person against whom the petition is being filed;

3. The basis for suspension and the specific underlying alleged actions;

4. A statement of the rights of the person against whom the petition is being filed. The statement of rights shall notify the person that the license may be suspended for up to five years with the period of suspension, as determined by the Virginia Board of Education. In addition, the statement shall notify the person that any adverse action against a license, including suspension, will be reported to the division superintendents in Virginia and, through a national clearinghouse, to chief state school officers of the other states and territories of the United States. The statement also shall notify the person of the right to cancel the license if he chooses not to contest the allegations in the petition and notify the individual that if he cancels the license, he shall receive a notice of cancellation that will include the statement: "The license holder voluntarily returned the license in response to a petition for suspension." The individual also shall be notified that the cancellation will be reported to division superintendents in Virginia and, through a national clearinghouse, to chief state school officers of the other states and territories of the United States; and

5. Any other pertinent information.

E. Filing of petition. The original petition shall be entered in the files of the local school board where the license holder is or was last employed.

F. Response to petition. The license holder shall present his written answer to the petition, if any, within 14 days of delivery or attempted delivery of the petition, as certified by the United States Postal Service.

1. If the license holder does not wish to contest the allegations in the petition, he may request cancellation of the license by submitting a written and signed statement requesting cancellation in response to a petition for suspension to the division superintendent. The division superintendent shall forward the request for cancellation along with the petition for suspension to the Superintendent of Public Instruction within 14 days of receipt. The Superintendent of Public Instruction shall cancel the license and send the person a notice of cancellation to the person by certified mail within 14 days of receipt of the request for cancellation.

2. If the license holder files a written answer admitting or denying the allegations in the petition or fails to file a written answer within 14 days of delivery or attempted delivery of the petition, as certified by the United States Postal Service, the local school board shall promptly proceed to a hearing. The local school board shall provide a hearing at the time and place of its regular meeting or at such other reasonable time and place it may specify. The license holder or his representative, if any, shall be given at least 14 days' notice of the hearing.

3. At its hearing, the local school board shall receive the recommendation of the division superintendent and then either deny the petition or recommend suspension. A decision to deny the petition shall be final, except as specified in subsection G of this section, and the investigative file on the petition shall be closed and maintained as a separate file. Any record or material relating to the allegations in the petition shall be placed in the investigative file. Should the local school board recommend the suspension of a license, the division superintendent shall forward the recommendation and the investigative file to the Superintendent of Public Instruction within 14 days.

G. Suspension on motion of the Virginia Board of Education. The Virginia Board of Education reserves the right to act directly to suspend a license when the Virginia Board of Education has reasonable cause to believe that subsection A of this section is applicable. The Superintendent of Public Instruction may send a petition for suspension to the license holder as specified in subsection D of this section. The license holder shall have the opportunity to present his written answer to the petition, if any, within 14 days of delivery or attempted delivery of the petition, as certified by the United States Postal Service.

1. If the license holder does not wish to contest the allegations in the petition, he may request cancellation of the license by submitting a written, signed statement requesting cancellation in response to a petition for suspension. The Superintendent of Public Instruction shall cancel the license and send a notice of cancellation to the person by certified mail within 14 days of receipt of their request for cancellation.

2. If the license holder files a written answer admitting the allegations in the petition or fails to file a written answer within 14 days of delivery or attempted delivery of the petition, as certified by the United States Postal Service, the petition shall be forwarded to the Virginia Board of Education for action. No suspension will be ordered without the involved license holder being given the opportunity to appear at a hearing specified in [8VAC20-23-780](https://law.lis.virginia.gov/admincode/title8/agency20/chapter23/section780/) C.

3. If the license holder timely files his written answer denying the allegations in the petition, the Superintendent of Public Instruction shall schedule a hearing with the investigative panel provided in [8VAC20-23-780](https://law.lis.virginia.gov/admincode/title8/agency20/chapter23/section780/) A. The license holder or his representative, if any, shall be given at least 14 days' notice of the hearing. The investigative panel shall take action on the petition as specified in [8VAC20-23-780](https://law.lis.virginia.gov/admincode/title8/agency20/chapter23/section780/) A. No suspension will be ordered without the involved license holder being given the opportunity to appear at a hearing specified in [8VAC20-23-780](https://law.lis.virginia.gov/admincode/title8/agency20/chapter23/section780/) C.

H. Reinstatement of license. A license may be suspended for a period of time not to exceed five years. The license may be reinstated by the Superintendent of Public Instruction, upon written request and application, with verification that all conditions for licensure have been satisfied. Notification to all appropriate parties will be communicated in writing by the Virginia Department of Education.

Statutory Authority

§§ [22.1-298.1](https://law.lis.virginia.gov/vacode/22.1-298.1/) and [22.1-299](https://law.lis.virginia.gov/vacode/22.1-299/) of the Code of Virginia.

Historical Notes

Derived from [Volume 34, Issue 24](http://register.dls.virginia.gov/toc.aspx?voliss=34:24), eff. August 23, 2018.

### 8VAC20-23-750. Denial.

A. A license may be denied for the following reasons:

1. Attempting to obtain a license by fraudulent means or through misrepresentation of material facts;

2. Falsification of records or documents;

3. Conviction of any felony;

4. Conviction of any misdemeanor involving moral turpitude;

5. Conviction of any misdemeanor involving a student or minor;

6. Conviction of any misdemeanor involving drugs (not alcohol);

7. Conduct with direct and detrimental effect on the health, welfare, discipline, or morale of a student or minor;

8. Revocation, suspension, surrender, cancellation, invalidation, or denial of, or other adverse action against, a teaching, administrator, pupil personnel services, or other education-related certificate or license by another state, territory, or country, or denial of an application for any such certificate or license;

9. Founded case of child abuse or neglect, after all administrative appeals have been exhausted; or

10. Other good and just cause in the best interest of the public schools of the Commonwealth of Virginia.

B. Any denial of a license for a reason set forth in [8VAC20-23-750](https://law.lis.virginia.gov/admincode/title8/agency20/chapter23/section750/) A shall be reported to division superintendents in Virginia and, through a national clearinghouse, to chief state school officers of the other states and territories of the United States.

Statutory Authority

§§ [22.1-298.1](https://law.lis.virginia.gov/vacode/22.1-298.1/) and [22.1-299](https://law.lis.virginia.gov/vacode/22.1-299/) of the Code of Virginia.

Historical Notes

Derived from [Volume 34, Issue 24](http://register.dls.virginia.gov/toc.aspx?voliss=34:24), eff. August 23, 2018.

### 8VAC20-23-760. Expired License.

Action against a license issued by the Virginia Board of Education may be taken for any of the reasons listed in [8VAC20-23-720](https://law.lis.virginia.gov/admincode/title8/agency20/chapter23/section720/) A, [8VAC20-23-740](https://law.lis.virginia.gov/admincode/title8/agency20/chapter23/section740/) A, or [8VAC20-23-750](https://law.lis.virginia.gov/admincode/title8/agency20/chapter23/section750/) A even if the license is expired, as long as the basis for action occurred prior to the issuance of the license or while the license was active.

Statutory Authority

§§ [22.1-298.1](https://law.lis.virginia.gov/vacode/22.1-298.1/) and [22.1-299](https://law.lis.virginia.gov/vacode/22.1-299/) of the Code of Virginia.

Historical Notes

Derived from [Volume 34, Issue 24](http://register.dls.virginia.gov/toc.aspx?voliss=34:24), eff. August 23, 2018.

### 8VAC20-23-770. Right to Counsel and Transcript.

A license holder or applicant shall have the right, at his own expense, to be represented by an attorney or other representative at (i) any local school board hearing provided for in [8VAC20-23-720](https://law.lis.virginia.gov/admincode/title8/agency20/chapter23/section720/) F 2 or [8VAC20-23-740](https://law.lis.virginia.gov/admincode/title8/agency20/chapter23/section740/) F 2, (ii) the investigative panel hearing provided for in [8VAC20-23-780](https://law.lis.virginia.gov/admincode/title8/agency20/chapter23/section780/) A, or (iii) in proceedings before the Virginia Board of Education as specified in [8VAC20-23-780](https://law.lis.virginia.gov/admincode/title8/agency20/chapter23/section780/) C. The hearing before the local school board provided for in [8VAC20-23-720](https://law.lis.virginia.gov/admincode/title8/agency20/chapter23/section720/) F 2 or [8VAC20-23-740](https://law.lis.virginia.gov/admincode/title8/agency20/chapter23/section740/) F 2 and the investigative panel hearing provided for in [8VAC20-23-780](https://law.lis.virginia.gov/admincode/title8/agency20/chapter23/section780/) A shall be recorded, and, upon written request, the license holder or applicant shall be provided a transcript of the hearing at his own expense. Any such hearing before the Virginia Board of Education shall be recorded, and, upon written request, the license holder or applicant shall be provided a transcript of the hearing at no charge.

Statutory Authority

§§ [22.1-298.1](https://law.lis.virginia.gov/vacode/22.1-298.1/) and [22.1-299](https://law.lis.virginia.gov/vacode/22.1-299/) of the Code of Virginia.

Historical Notes

Derived from [Volume 34, Issue 24](http://register.dls.virginia.gov/toc.aspx?voliss=34:24), eff. August 23, 2018.

### 8VAC20-23-780. Action by the Superintendent of Public Instruction and the Virginia Board of Education.

A. Upon receipt of a petition, the Superintendent of Public Instruction will ensure that an investigative panel at the state level reviews the petition. The panel shall consist of three to five members selected by the Superintendent of Public Instruction. The applicant or license holder shall be given at least 14 days' notice of the date, time, and location of the investigative panel hearing when his case will be considered. The Virginia Department of Education shall ensure that the applicant or license holder receives all documentation that will be used during the investigative panel hearing prior to the hearing. Representatives of the local school division and the applicant or license holder are entitled to be present with counsel and witnesses if so desired. The investigative panel hearing shall be recorded. The recommendation of the investigative panel is made to the Superintendent of Public Instruction who will forward his recommendation and the documentation used during the investigative panel hearing to the Virginia Board of Education or its duly designated committee for consideration at one of its scheduled meetings. The applicant or license holder shall be given at least 14 days' notice of the Virginia Board of Education meeting when his case will be considered. Following the investigative panel hearing, the Virginia Department of Education shall forward the recommendation of the investigative panel to the applicant or license holder as soon as practicable, but no later than 14 days prior to the scheduled Virginia Board of Education meeting when his case will be considered.

B. The Superintendent of Public Instruction is authorized to approve the issuance of licenses for individuals who have a misdemeanor conviction related to drugs, not including alcohol, based on a review of the cases. No individual will be denied a license without a hearing of the Virginia Board of Education as required in this section.

C. The applicant or license holder and representatives of the local school division are entitled to be present with counsel and witnesses, if so desired, at the hearing of the Virginia Board of Education. The Virginia Board of Education, or its duly designated committee, shall consider the recommendation of the Superintendent of Public Instruction and such relevant and material evidence as the applicant or license holder and representative of the local school division may desire to present at the hearing. At its discretion, the Virginia Board of Education may ask the applicant or license holder questions. At the conclusion of the hearing, the Virginia Board of Education will announce its decision.

D. The decision of the Virginia Board of Education shall be recorded in the minutes of the meeting, and the applicant or license holder and principal complainants will receive written notice of the decision.

Statutory Authority

§§ [22.1-298.1](https://law.lis.virginia.gov/vacode/22.1-298.1/) and [22.1-299](https://law.lis.virginia.gov/vacode/22.1-299/) of the Code of Virginia.

Historical Notes

Derived from [Volume 34, Issue 24](http://register.dls.virginia.gov/toc.aspx?voliss=34:24), eff. August 23, 2018.

### 8VAC20-23-790. Right of Applicant or License Holder to Appear at Hearing.

An applicant or a license holder shall have the right to appear in person at the hearings held by the local school board, the Superintendent's Investigative Panel, Virginia Board of Education, or board committee described in this part unless he is confined to jail or a penal institution. The local school board or Virginia Board of Education, at its discretion, may continue such hearings for a reasonable time if the applicant or license holder is prevented from appearing in person for reasons such as a documented medical condition or mental impairment.

Statutory Authority

§§ [22.1-298.1](https://law.lis.virginia.gov/vacode/22.1-298.1/) and [22.1-299](https://law.lis.virginia.gov/vacode/22.1-299/) of the Code of Virginia.

Historical Notes

Derived from [Volume 34, Issue 24](http://register.dls.virginia.gov/toc.aspx?voliss=34:24), eff. August 23, 2018.

**ATTACHMENT C**

**VIRGINIA EDUCATION ASSOCIATION’s 9-13-18 COMMENTS TO PROPOSED GUIDELINES**

VEA’s requested changes to the procedures for license hearings are highlighted in blue in the text.

**Proposed Procedural Guidelines for Conducting Licensure Hearings**

**REVISED SEPTEMBER 6, 2018[[1]](#footnote-1)**

**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* (8VAC20-23-10 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 on motion ofthe Board of Education or the **~~action~~ matter** 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 to jail or a penal institution.

**A license holder may waive his/her right to a hearing before the Panel and request that the licensure matter go directly to the Board for a hearing.**

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 denial of renewal or reinstatement, or revocation or suspension of a license.

**~~The standard of proof shall be a preponderance of the evidence.~~ The standard of proof shall be clear and convincing evidence**[[2]](#footnote-2)

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.

**Parties shall endeavor to furnish** all exhibits, documents, and other evidence that 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.

**Parties shall endeavor to furnish** 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.

While excerpts of text-based materials, including documents, transcripts, and legal authority, may be presented to the Panel and Board, **any member of either body may request that the ~~license holder~~ petitioner[[3]](#footnote-3) provide at least one copy of any such materials in their entirety at the time of the hearing. The purpose of providing a copy of such materials in their entirety is to** assist the Panel or Board in weighing the relevancy and materiality of such evidence. **If provided,** 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.

**The license holder has the right to present such relevant and material evidence as the license holder may desire to present at the hearing.** **VDOE Office of Licensure shall request unredacted documents from local school divisions and shall use unredacted documents at licensure hearings**.[[4]](#footnote-4)

**~~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.~~**[[5]](#footnote-5)

**~~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.

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.

**Superintendent’s Investigative Panel Hearing**

A chair and vice-chair **of the Panel** 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. **If both the chair and vice-chair are absent, another member of the Panel may preside over the hearing and fulfill the responsibilities of the chair.**

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, **petitioner, and any witnesses who participate in the hearing.** **~~local school board representative 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’s recommendation to the Superintendent.

The order of ~~procedures~~ **proceedings** 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~~ shall** **deliberate in order to consider the relevant and material evidence presented by the license holder and petitioner and to** make **~~written findings of fact, conclusions of law related to those facts, and~~** a recommendation to the Superintendent of Public Instruction as to what adverse action, if any, should be taken by the Board of Education.

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~~ matter**.

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 on motion ofthe 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~~.[[6]](#footnote-6) A VDOE staff person, **whose role is to document the Panel’s recommendation and reasoning and to acquire the information necessary to prepare a written summary of the proceedings,** 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. A different VDOE staff person, **whose role is to document the Panel’s recommendation and reasoning and to acquire the information necessary to prepare a written summary of the proceedings,** shall be present for the deliberations of the Panel.

~~However, a~~ **The** 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 and **reasoning** 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~~ matter**.

**~~The Panel’s written findings of fact, conclusions of law, and recommendation~~**~~,~~ **The VDOE staff person’s written summary of the Panel’s proceedings, including the Panel’s recommendation and reasoning,** along with the agency record pertaining to the licensure **~~action~~ matter**, 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 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. **VDOE staff person’s written summary of the Panel’s proceedings;**
2. Agency record pertaining to the licensure **~~action~~ matter**;
3. The Panel’s **~~written findings of fact, conclusions of law, and~~** **recommendation and reasoning**; and
4. The Superintendent’s **~~written~~** recommendation. If such recommendation differs from that of the Panel, the Superintendent will provide a written statement supporting his/her 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. **If both the president and vice-president are absent, another member of the Board may preside over the hearing and fulfill the responsibilities of the president.**

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 either did not exist at the time of the Panel’s hearing or was discovered subsequent to the hearing and was therefore not available for presentation to the Panel.** For purposes of these guidelines, inculpatory evidence means that which tends to incriminate the license holder or to establish the license holder’s fault or guilt with respect to a matter at issue in the proceedings. **~~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, **petitioner, and any witnesses who participate in the hearing.** **~~local school board representative 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~~**

**The order of proceedings 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 Board members**
5. **Cross-examination of witnesses by license holder or license holder’s representative**
6. **Presentation of license holder’s evidence**
7. **Questions by Board 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 Board**

A license holder or license holder’s representative or **a petitioner** 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 relevant and material evidence presented by the license holder and petitioner** and the Panel’s **~~findings of fact, conclusions of law, and~~** recommendation **and reasoning** 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.~~**

**The Superintendent of Public Instruction shall not participate in the Board’s deliberations.**

**VDOE staff shall not participate in the Board’s deliberations.**

**Board members shall be joined in their deliberations by an assistant attorney general whose role is to provide legal advice, serve as counsel to the Board, and assist the Board in preparing the order that sets forth its decision.**

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~~ matter**.

**~~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. **~~If the Board determines that an adverse licensure action is appropriate against a particular license, the~~** The Board shall issue an order setting forth **~~such action~~ its decision**, which shall be signed by the president of the Board of Education.

1. The Assistant Attorney General’s (“AAG”) revisions are highlighted in yellow. VEA’s requested changes to the procedures for license hearings are highlighted in blue in the text. VEA’s footnotes with explanation and legal authority for its proposed changes are in red. VEA uses the word “teacher” to include all individuals licensed by the Virginia Board of Education, including Teachers, Library and Media Specialists, Mathematics and Reading Specialists, Assistant Principals, Principals, Division Superintendents, School Counselors, School Managers, School Psychologists, School Social Workers, and Vocational Evaluators. VEA believes all teachers must have the same rights in license actions as other professionals licensed by the Commonwealth. [↑](#footnote-ref-1)
2. VEA asks ABTEL to recommend to the Virginia Board of Education (the “Board”) that it change the standard of proof to clear and convincing evidence. The clear and convincing evidence standard of proof is used by Virginia Licensing Boards for other professionals like electricians, nurses, realtors, and attorneys. The standard in cases against school speech pathologists and other school employees licensed by the Virginia Board of Health Professionals is clear and convincing evidence. Teacher licenses must receive the same legal protections and standard of proof as other professionals. Virginia Code Section 54.1-100 states, “the right of every person to engage in any lawful profession of his choice is clearly protected by both the Constitutions of the United States and the Constitution of Virginia.” Virginia agencies cannot abridge the right of teachers to work in public schools unless “it is clearly found that such abridgement is necessary for the protection or preservation of the health, safety and welfare of the public and (ii) any such abridgment is no greater than necessary to protect or preserve the public, health, safety, and welfare.” Id. VDOE is not exempt from this statute simply because it promulgated broad grounds for revoking or suspending teaching licenses. [↑](#footnote-ref-2)
3. VEA asks ABTEL to recommend to the Board of Education to change the word license holder to petitioner because the current provision is unconstitutional. It potentially shifts the burden of prosecution from VDOE to the license holder and allows Panel and Board members to be investigators instead of neutral decision makers. It also interferes with the attorney-client relationship and violates Virginia Supreme Court Rule, Part 6, Sec II, Rules of Professional Conduct 1.6(A) stating: “A lawyer shall not reveal information protected by the attorney-client privilege under applicable law or other information gained in the professional relationship that the client has requested be held inviolate or the disclosure of which would be embarrassing or would be likely to be detrimental to the client . . .” Attorneys are prohibited from disclosing information gained during the course of representation even when it is available in the public domain. VDOE cannot compel the teacher’s attorney to provide any trial preparation material or work product without a court order.

The Agency prosecutes and bears the burden to prove grounds for discipline. The teacher defending her license has the right to present “such relevant and material evidence **as the license holder may desire to present at the hearing**.” 8 VAC 20-22-740(C) (emphasis added). The Board cannot dictate what transcript testimony the teacher believes supports her defense or shift the burden of prosecution to the teacher. VDOE or counsel for the local school board is free to obtain, on its own and at its own expense, whatever documents or information it believes would assist the Board; but it cannot compel the teacher or her defense counsel to turn over any records without a court order. Id. [↑](#footnote-ref-3)
4. VEA asks ABTEL to recommend to the Board of Education that it add the blue highlighted text so teachers know their accusers and witnesses. The first sentence of this paragraph is copied from 8 VAC 20-22-740(C). The second sentence reflects the license holder’s right to confront and cross-examine her accusers when defending property rights. It is consistent with VDOE’s duty to produce personnel records to the employee under Virginia Freedom Information Act, the Government Data Collections Acts as well as advance notice of any facts the agency relies on to make an adverse decision. Va. Code §§ 2.2-3705.1, 2.2-3806, 2.2-4019 & 2.2-4020. In practice, VEA has had many cases where its attorneys discover the statements collected or recorded by the school division against a teacher are inaccurate, incomplete, or produced for improper purposes. Disclosure of accusers and witnesses is crucial to a teacher’s defense. See footnote 5 for further explanation & legal authority. [↑](#footnote-ref-4)
5. FERPA should not be in guidelines for petitions against teacher licenses. A teacher’s right to know the identities of student accusers and witnesses to protect his teaching license should never be contingent on a parent’s consent. VDOE must make it clear to school divisions that anonymous, redacted complaints and eyewitness statements against teachers is **NOT** permitted. The first sentence in the AAG’s currently deleted paragraph will cause confusion in school divisions because it does not explain that student statements are personnel, not educational, records. The last sentence of the second new paragraph suggests that parents decide whether teachers can confront and cross-examine accusers. No other Virginia professional is prosecuted with redacted documents including school employees licensed by other agencies like Department of Health. This provision unconstitutionally deprives the teacher of his right to confront and cross-examine his accusers and prepare a defense. Va. Code § 2.2-4020. The Supreme Court of Virginia held that agencies must provide minimum constitutional due process in administrative hearings including the right to present evidence in one’s own defense as well as the right to confront and cross-examine adverse witnesses. Hladys v. Comm., 235 Va. 145, 147, 366 S.E.2d 98, 99 (1988), citing, Goldberg v. Kelly, 397 U.S. 254 (1970); see Mall Amusements, LLC v. Va. Dep’t of Alcoholic Beverages Control, 66 Va. App. 605, 790 S.E.2d 245, 249 (2016) (ABC liquor license cannot be revoked without due process including right to confront adverse witnesses). The Supreme Court of South Carolina reached the same conclusion in a teacher license revocation case. Brown v. South Carolina State Bd. Of Educ., 301 S.C. 328, 291 S.E.2d 866, 867 (1990) (state cannot use letter alone from testing entity to revoke teaching license since educator entitled to cross-examine adverse witnesses). Failure to disclose the identities of student accusers and witnesses violates basic due process including the right to confront and cross-examine accusers. Actions against teacher licenses based on anonymous student complaints or redacted statements is unconstitutional.

School division investigations of complaints against teachers and student statements against teachers are personnel records used to terminate employment and/or take license action. They are **NOT** educational records. They are **not** records of student performance, academics, or learning ability. Statements or interviews prompting an investigation or discipline of an employee must be disclosed to the employee defending herself under FOIA, GDCA, and APA. Va. Code §§ 2.2-3705.1(1), 2.2-3806, 2.2-4019, & 2.2-4020. See McChrystal v. Fairfax County Bd. Supr’s, 67 Va. Cir. 171 (Fairfax Cir. Ct. 2005). FERPA does not apply to investigations or statements for teacher license cases.

FERPA does not apply to prevent sharing unredacted records with the teacher facing employment or license discipline. In Culbert v. City of New York, 679 N.Y.S.2d 148, 254 A.D.2d 385 (NY AD 2d Dept. 1998) the New York Appellate Division ordered a school to provide the teacher facing termination the names and addresses of each person who witnessed a sexual assault, and all reports of current and prior incidences. The Court held the items sought were not FERPA “Education records” as defined in 20 USC § 1232g because they were not related to student performance. See also Bauer v. Kincaid, 789 F. Supp. 525 (W.D. Mo. 1991)(criminal investigations and incident reports with personally identifiable information are not the type of records FERPA protects); Brouillet v. Cowles Pub. Co., 791 P.2d 526 (Wash. 1990) (school’s investigative file of a teacher’s sexual misconduct with students is not covered by FERPA. It is a teacher or employment, not a student, record). The United States Supreme Court narrowly defined education records under FERPA in Owasso Independent School District v. Falvo, 524 US 426 (2002) as performance records maintained by a school in a student’s separate file.

A guidance document from the US Department of Education confirms FERPA does not allow students or parents to make anonymous complaints against teachers. FERPA’s purpose is to protect student educational records and ensure parent access to them. Bauer v. Kincaid, 759 F. Supp. 575, 590 (W.D. Mo. 1991). FERPA does **not** allow a school to create records in the form of student statements and investigations summarizing student interviews and use those records to terminate or take action against a teacher’s license without identifying the students to the teacher. Id. at p. 1 ¶ 4 & 5. “Information a school official obtains through personal knowledge or observation, or has heard orally from others,” is not protected by FERPA. FERPA also allows disclosure of information to school personnel with “a legitimate educational interest” in the information. Id. at p. 2-3. Teachers have legitimate educational interests in protecting their employment and licenses. Another exception allows education agencies and schools to disclose “directory information.” Directory information includes student names, addresses, e-mails, and telephone listings. Id at p. 3-4. Parent names and contact information are not protected at all in FERPA. So, student names and addresses are not protected from disclosure by FERPA because they do not affect any privacy interest.

 Complaints by children against other professionals are not anonymous. Criminal and CPS complaints by students against teachers cannot be anonymous. In fact, schools share unredacted statements with police and social workers. Teachers are entitled to discovery of such records in criminal cases. Department of Social Services must notify the teacher of the identity and contact information for the alleged victim and witnesses and allow her to review all information in the record about the investigation for appeal of a local agency finding unless there is clear and convincing proof that their release will endanger their life or safety. Va. Code

§§ 63.2-1516.1(A)(2) & (6) and 63.2-1526(A). As stated, Code Sections 2.2-4019(A)(iii) and 2.2-4020(B) require the Agency to give the respondent “advance notice of **any contrary fact basis or information in the possession of the agency that can be relied upon in making an adverse decision**.” This includes the identity and contact information of all students, parents, and witnesses. VDOE must require school divisions to produce unredacted records.

Teachers cannot be deprived of their constitutional property interest without due process of law. Students are not entitled to file anonymous statements leading to license discipline. School divisions and the Department of Education cannot dismiss teachers or consider loss of teaching license based on anonymous investigations or redacted statements. [↑](#footnote-ref-5)
6. VEA asks ABTEL to recommend to the Board of Education that it delete this provision. Compelling the attendance of the local school board exceeds the plain language of the VDOE’s regulatory authority in 8 VAC 20-22-740(A). It burdens local school divisions with unnecessary legal costs and expenses when those funds could be used in the classroom. The current practice allows local school participation but maintains State responsibility for prosecuting teaching licenses. [↑](#footnote-ref-6)