



# COMMONWEALTH of VIRGINIA

## BOARD OF EDUCATION

P.O. BOX 2120

RICHMOND, VA 23218-2120

January 25, 2017

TO: School Board Chairs  
Division Superintendents

FROM: Billy K. Cannaday, Jr., President, Virginia Board of Education  
Steven R. Staples, Superintendent of Public Instruction

SUBJECT: Investigation and Reporting Requirements, Including Requirements  
Relating to the Revocation or Suspension of a License

The purpose of this memorandum is to respond to numerous questions from the field and provide information on selected investigation and reporting requirements established by statutes and regulations. An understanding of and adherence to the requirements outlined in this memorandum are paramount in addressing educator misconduct and maintaining a safe environment for students.

This correspondence provides an overview of the regulations governing the revocation or suspension of a license and reviews investigation requirements relating to the hiring of school personnel, including fingerprinting, criminal history checks, and searches of the Central Registry. It also addresses notification for certain dismissals and resignations.

### **Obligations Relating to the Revocation or Suspension of a License**

The *Licensure Regulations for School Personnel* (8VAC20-22-690 and 8VAC20-22-710) outline the procedures for revocation or suspension of a license issued by the Board of Education. Below is a summary of the procedures and responsibilities of school boards and superintendents set forth in these regulations. You may access the full text of the regulations online at: <http://law.lis.virginia.gov/admincode/title8/agency20/chapter22/>.

#### **Duty to File a Complaint**

The licensure regulations state that a complaint may be filed by anyone, but "it **shall** be the duty of a division superintendent, principal or other responsible school employee" [emphasis added] to file a complaint in any case in which he has knowledge that a license holder is guilty of any offense or conduct set forth in subsection A of 8VAC20-22-690 (revocation) or subsection A of 8VAC20-22-710 (suspension).

**Duty to Investigate**

The regulations require that, upon receipt of a complaint against a license holder, a “division superintendent or his duly authorized representative **shall investigate**” [emphasis added]. If the complaint is found to be without merit, the superintendent or his representative must notify the complaining party and close the file. If the division superintendent or school board determines there is reasonable cause to believe the complaint is well founded, the license holder “**shall be notified** of the complaint by a written petition” [emphasis added] for revocation or suspension signed by the division superintendent. See subsection C of 8VAC20-22-690 for revocation and subsection C of 8VAC20-22-710 for suspension.

**Duty to Send Any Request for Cancellation from License Holder to the Superintendent of Public Instruction Within 14 Days of Receipt**

As set forth in the regulations, a petition for revocation or suspension must include a statement of rights that notifies the license holder of the right to request the cancellation of his license by sending a signed written request to the division superintendent within 14 days of receipt of the petition. To request cancellation, the license holder must state that he is requesting cancellation in response to a petition, acknowledge that reasons for cancellation are the same as reasons for revocation, and acknowledge that he understands that the revocation or suspension will be reported to division superintendents in Virginia and to state education officials in other states and territories of the United States.

The regulations (see 8VAC20-22-690 F(1) for revocation and 8VAC20-22-710F(1) for suspension) require that a division superintendent forward any request for cancellation, along with a copy of the petition, to the Superintendent of Public Instruction within 14 days of receipt of the request for cancellation.

**Obligation to Proceed to a Hearing Before Local School Board, if License Holder Does Not Request Cancellation Within 14 Days**

Under the regulations, if a license holder does not submit a request for cancellation to the division superintendent according to the procedures set forth in the regulations within 14 days of receipt of the petition, the local school board “shall proceed” to a hearing on the petition and shall provide the license holder at least 14 days’ notice of the hearing. This means that in the event of any other response to the petition (including a license holder filing a written answer admitting the charges, refusing to accept the copy of the petition, failing to file a written answer within 14 days after service of the petition, or submitting a written answer denying the charges in the petition), the school board shall proceed to a hearing.

**After School Board Hearing, Duty to Forward School Board's Recommendation and Investigative File/Supporting Evidence Within 14 Days for Revocation, and Promptly for Suspension**

At the hearing, the local school board receives the recommendation of the division superintendent and then either dismisses the complaint or recommends license revocation or suspension. If the complaint is dismissed, such decision is final and the investigative file "shall be closed and maintained as a separate file. Any record or material relating to the charges in any other file shall be placed in the investigative file."

However, if the school board recommends the revocation of a license, subsection F of 8VAC20-22-690 requires that, "the division superintendent shall forward the recommendation and the investigative file to the Superintendent of Public Instruction **within 14 days**" (emphasis added).

If the school board recommends the suspension of a license, subsection F of 8VAC20-22-710 requires that such "recommendation, along with supporting evidence, **shall promptly be forwarded** by the division superintendent to the Superintendent of Public Instruction" (emphasis added).

### **Additional Notification Responsibility**

**Duty to Notify the Board of Education of Teacher Dismissal or Resignation in Certain Cases (within 10 days)**

Section 22.1-313 of the *Code of Virginia* deals generally with school board decisions. Although the section focuses largely on administrative requirements for school board proceedings, subsection F imposes a duty on school boards to report certain cases of misconduct to the Board of Education. School boards should provide such notification in writing.

***Section 22.1-313. Decision of school board; generally.***

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

## **Records Checks and Certification Relating to the Hiring of School Personnel**

### **Fingerprinting and Criminal Record Check**

Under §22.1-296.2 of the *Code of Virginia*, school boards must require any applicant who is offered or accepts employment to submit to fingerprinting and provide information needed to obtain a criminal history record.

### **Child Abuse and Neglect Data (Central Registry Search)**

Section 22.1-296.4 of the *Code of Virginia* addresses child abuse and neglect data obtained through a search of the Central Registry. Under the statute, the Department of Social Services is required to maintain a database of central child abuse and neglect registries in other states that provide access to out-of-state school boards, for use by local school boards.

School divisions may access this database online at:

[http://www.dss.virginia.gov/files/division/licensing/background\\_index\\_childrens\\_facilities/founded\\_cps\\_complaints/directory.pdf](http://www.dss.virginia.gov/files/division/licensing/background_index_childrens_facilities/founded_cps_complaints/directory.pdf)

### **Other Data Required on Employment Application, Including Certification by Applicant Relating to Criminal Offenses and Founded Cases of Child Abuse or Neglect**

Section 22.1-296.1 describes other data that school boards shall require on their employment application.

#### ***§22.1-296.1. Data on convictions for certain crimes and child abuse and neglect required; penalty.***

- A. As a condition of employment for all of its public school employees, whether full-time or part-time, permanent, or temporary, every school board shall require on its application for employment certification (i) that the applicant has not been convicted of a felony or any offense involving the sexual molestation, physical or sexual abuse or rape of a child; and (ii) whether the applicant has been convicted of a crime of moral turpitude. Any person making a materially false statement regarding any such offense shall be guilty of a Class 1 misdemeanor and upon conviction, the fact of said conviction shall be grounds for the Board of Education to revoke such person's license to teach. \**
- B. Every school board shall also require on its application for employment, as a condition of employment requiring direct contact with students, whether full-time or part-time, permanent, or temporary, certification that the applicant has not been the subject of a founded case of child abuse and neglect. Any person making a materially*

*false statement regarding a finding of child abuse and neglect shall be guilty of a Class 1 misdemeanor and upon conviction, the fact of said conviction shall be grounds for the Board of Education to revoke such person's license to teach....*

**\*NOTE:** In December 2015, the Supreme Court of Virginia in the case of *Deilia Butler v. Fairfax County School Board* (Case No. 150150) addressed this section of the Code and, specifically, whether it prohibits local school boards from hiring an individual who has been previously convicted of a felony. The Superintendent of Public Instruction notified divisions of the court's decision by Superintendent's Memorandum #125-16 in April 2016, and divisions may access the decision online at: <http://www.courts.state.va.us/opinions/opnscvwp/1150150.pdf>.

The combined efforts of the Virginia Board of Education, Department of Education, school boards, and division superintendents will help ensure safe schools for students in the Commonwealth of Virginia. If you have questions or need additional information regarding the statutory provisions or regulations discussed in this memorandum, please contact Nancy Walsh, professional practices specialist, at (804) 371-2522 or [nancy.walsh@doe.virginia.gov](mailto:nancy.walsh@doe.virginia.gov).

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