

**Procedural Guidelines for Conducting Licensure Hearings
Adopted by the Board November 15, 2018, and Effective January 1, 2019
(Proposed Revisions)**

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 and the issuance of written reprimands to license holders. 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 of the Board of Education or the 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 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 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 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 petitioner or 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.

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 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.

Testimony or evidence containing hearsay, if presented to the Panel, shall not form the sole basis for the Panel's recommendation to the Superintendent.

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 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 shall deliberate in order to consider the relevant and material evidence presented by the license holder and petitioner and to make 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 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 of the Board of Education.

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

The VDOE staff person who fulfills the role of petitioner at a Panel hearing may report the Panel's 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 matter.

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 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 matter;
3. The Panel's recommendation and reasoning; and
4. The Superintendent's 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.

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 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.

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.

At the conclusion of the hearing, the members of the Board of Education shall deliberate in order to consider such relevant and material evidence as the license holder and petitioner may desire to present at the hearing; evidence presented at the Panel hearing; the Panel's recommendation and reasoning; and the recommendation of the Superintendent of Public Instruction.

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.

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 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.

The Board of Education will vote in an open meeting on what **adverse** action, if any, shall be taken. The Board shall issue an order setting forth its decision, which shall be signed by the president of the Board of Education. If the Board votes to take no action against the license or

not to issue a written reprimand of the license holder, the decision of the Board shall be announced in a way that does not identify the license holder.