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Procedure for Adjusting Grievances P 5-3Procedure for Adjusting Grievances

The grievance procedures as adopted by the State Board of Education shall be the procedures under which all formal grievances of employees, with the exception of administrative, classified, and supervisory personnel, will be processed. Copies of the grievance procedures shall be maintained in the office of each principal, the office of the director for personnel services and the office of the superintendent.

Legal Reference:

Code of Va., § 22.1-306{ XE "zz:Code of Va 22.1-306" } Definitions As used in this article:

"Grievance" means a complaint or dispute by a teacher relating to his or her employment including, but not necessarily limited to: (i) disciplinary action including dismissal or placing on probation; (ii) the application or interpretation of: (a) personnel policies, (b) procedures, (c) rules and regulations, (d) ordinances and (e) statutes; (iii) acts of reprisal against a teacher for filing or processing a grievance, participating as a witness in any step, meeting or hearing relating to a grievance, or serving as a member of a fact-finding panel; and (iv) complaints of discrimination on the basis of race, color, creed, political affiliation, handicap, age, national origin or sex. Each school board shall have the exclusive right to manage the affairs and operations of the school division. Accordingly, the term "grievance" shall not include a complaint or dispute by a teacher relating to (i) establishment and revision of wages or salaries, position classifications or general benefits, (ii) suspension of a teacher or nonrenewal of the contract of a teacher who has not achieved continuing contract status, (iii) the establishment or contents of ordinances, statutes or personnel policies, procedures, rules and regulations, (iv) failure to promote, (v) discharge, layoff or suspension from duties because of decrease in enrollment, decrease in enrollment or abolition of a particular subject or insufficient funding, (vi) hiring, transfer, assignment and retention of teachers within the school division, (vii) suspension from duties in emergencies, or (viii) the methods, means and personnel by which the school division's operations are to be carried on.

While these management rights are reserved to the school board, failure to apply, where applicable, the rules, regulations, policies, or procedures as written or established by the school board is grievable.

"Dismissal" means the dismissal of any teacher during the term of such teacher's contract and the nonrenewal of the contract of a teacher on continuing contract."

Code of Va., § 22.1-307{ XE "zz:Code of Va 22.1-307" } Dismissal, etc., of teacher; grounds "A. Teachers may be dismissed or placed on probation for incompetency,

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immorality, noncompliance with school laws and regulations, disability as shown by competent medical evidence when in compliance with federal law, conviction of a felony or a crime of moral turpitude or other good and just cause. No teacher shall be dismissed or placed on probation solely on the basis of the teacher's refusal to submit to a polygraph examination requested by the school board.

B. For the purposes of this article, "incompetency" may be construed to include, but shall not be limited to, consistent failure to meet the endorsement requirements for the position or performance that is documented through evaluation to be consistently less than satisfactory. "

Code of Va., § 22.1-308{ XE "zz:Code of Va 22.1-308" } Grievance procedure "A. The Board of Education shall prescribe a grievance procedure which shall include the following:

1. Except in the case of dismissal or placing on probation, a first step which shall provide for an informal, initial processing of a grievance by the most immediate appropriate supervisor through a discussion;
2. A requirement that all stages of the grievance beyond the first step be in writing on forms prescribed by the Board of Education and supplied by the school board;
3. A requirement that in reducing the grievance to writing, the teacher shall specify the specific relief sought through the use of the procedure;
4. The right of the grievant and the respondent to present appropriate witnesses and be represented by legal counsel and another representative;
5. Reasonable time limitations, prescribed by the Board, for the grievant to submit an initial complaint and to appeal each decision through the steps of the grievance procedure which shall correspond generally or be equivalent to the time prescribed for response at each step;
6. Termination of the right of the grievant to further appeal upon failure of the grievant to comply with all substantial procedural requirements of the grievance procedure without just cause;
7. The right of the grievant, at his option, upon failure of the respondent to comply with all substantial procedural requirements without just cause, to advancement to the next step or, in the final step, to a decision in his favor;

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8. A final step which shall provide for a final decision on the grievance by the school board;

9. The provisions of §§ [22.1-309](#) through [22.1-313](#).

B. Representatives referred to in subsection A 4 of this section may examine, cross-examine, question and present evidence on behalf of a grievant or respondent in the grievance procedure without being in violation of the provisions of § [54.1-3904](#).

C. Nothing in the procedure shall be construed to restrict any teacher's right to seek or a school division administration's right to provide customary review of complaints that are not included within the definition of a grievance."

Code of Va., § 22.1-309{ XE "zz:Code of Va 22.1-309" } Notice to teacher of recommendation of dismissal or placing on probation; school board not to consider merits during notice; superintendent required to provide reasons for recommendation upon request

"In the event a division superintendent determines to recommend dismissal of any teacher or the placing on probation of a teacher on continuing contract, written notice shall be sent to the teacher notifying him of the proposed dismissal or placing on probation and informing him that within fifteen days after receiving the notice the teacher may request a hearing before the school board as provided in § [22.1-311](#) or before a fact-finding panel as provided in § [22.1-312](#). During such fifteen-day period and thereafter until a hearing is held in accordance with the provisions herein, if one is requested by the teacher, the merits of the recommendation of the division superintendent shall not be considered, discussed or acted upon by the school board except as provided for herein. At the request of the teacher, the division superintendent shall provide the reasons for the recommendation in writing or, if the teacher prefers, in a personal interview. In the event a teacher requests a hearing pursuant to § [22.1-311](#) or § [22.1-312](#), the division superintendent shall provide, within ten days of the request, the teacher or his representative with the opportunity to inspect and copy his personnel file and all other documents relied upon in reaching the decision to recommend dismissal or probation. Within ten days of the request of the division superintendent, the teacher or his representative shall provide the division superintendent with the opportunity to inspect and copy the documents to be offered in rebuttal to the decision to recommend dismissal or probation. The division superintendent and the teacher or his representative shall be under a continuing duty to disclose and produce any additional documents identified later which may be used in the respective parties' cases-in-chief. The cost of copying such documents shall be paid by the requesting party.

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For the purposes of this section, "personnel file" shall mean any and all memoranda, entries or other documents included in the teacher's file as maintained in the central school administration office or in any file on the teacher maintained within a school in which the teacher serves."

Code of Va., § 22.1-310{ XE "zz:Code of Va 22.1-310" } Election of hearing before fact-finding panel prior to decision of school board "A. In the event a grievance, other than a grievance to which the provisions of § [22.1-309](#) are applicable, is not settled at a lower step, the teacher or the school board may elect to have a hearing by a fact-finding panel as provided in § [22.1-312](#) prior to a decision by the school board.

B. In the case of a grievance to which the provisions of § [22.1-309](#) are applicable, the teacher or the school board may elect, within fifteen days after the teacher receives the notice referred to in § [22.1-309](#), to have a hearing by a fact-finding panel as provided in § [22.1-312](#) prior to a decision by the school board.

C. In no grievance after a hearing by a fact-finding panel shall the teacher have a right to a further hearing by the school board as provided in subsection D of § [22.1-313](#), except in the case of a grievance to which the provisions of § [22.1-309](#) are applicable where the school board elected to have a hearing by a fact-finding panel. A school board shall have the right to require a further hearing as provided in subsection D of § 22.1-313 in any grievance."

Code of Va. § 22.1-311{ XE "zz:Code of Va 22.1-311" } Hearing before school board "The hearing before the school board, which shall be private unless the teacher requests a public one, must be set within thirty days of the request, and the teacher must be given at least fifteen days' written notice of the time and place. At the hearing the teacher may appear with or without a representative and be heard, presenting testimony of witnesses and other evidence."

Code of Va., § 22.1-312{ XE "zz:Code of Va 22.1-312" } Hearing before fact-finding panel "A. In the event that a hearing before a fact-finding panel is requested, a three-member panel shall be selected by the following method. The teacher shall select one panel member from among other employees of the school division. The division superintendent shall select one panel member from among employees of the school division. The teacher and the division superintendent shall select their respective panel members within five days of any request for a hearing before a fact-finding panel. The two panel members so selected shall select the third impartial panel member. If within five days after both panel members have been selected they are unable to agree upon a third panel member, the chief judge of the circuit court

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shall be requested by the two members of the panel to furnish a list of five qualified and impartial fact finders, one of whom shall then be selected by the two members of the panel as the third member. The persons comprising the list may reside within or without the jurisdiction of the circuit court, be residents of the Commonwealth of Virginia and, in all cases, shall possess some knowledge and expertise in public education and education law and shall be deemed by the judge capable of presiding over an administrative hearing. Selection shall be made by the panel members alternately deleting any name from the list until only one remains. The panel member selected by the teacher shall make the first deletion. This selection process shall be completed within five days after receipt of the list of fact finders from the chief judge. The third impartial panel member shall chair the panel. No elected official shall serve as a panel member.

With the agreement of the teacher's and division superintendent's panel members, the impartial panel member shall have the authority to conduct the hearing and make recommendations as set forth herein while acting as a hearing officer. The Attorney General shall represent personally or through one of his assistants any third impartial panel member who shall be made a defendant in any civil action arising out of any matter connected with his duties as a panel member. If, in the opinion of the Attorney General, it is impracticable or uneconomical for such legal representation to be rendered by him or one of his assistants, he may employ special counsel for this purpose, whose compensation shall be fixed by the Attorney General and be paid out of the funds appropriated for the administration of the Department of Education.

B. The panel shall set the time for a hearing, which shall be held within thirty days, and shall so notify the division superintendent and the teacher. The teacher and the division superintendent each may have present at the hearing and be represented at all stages by a representative or legal counsel.

C. The panel shall determine the propriety of attendance at the hearing of persons not having a direct interest in the hearing, provided that, at the request of the teacher, the hearing shall be private.

D. The panel may ask, at the beginning of the hearing, for statements from the division superintendent and the teacher clarifying the issues involved. The parties shall then present their claims and evidence. Witnesses may be questioned by the panel members, the teacher and the division superintendent. The panel may, at its discretion, vary this procedure but shall afford full and equal opportunity to all parties for presentation of any material or relevant evidence and shall afford the parties the right of cross-examination.

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The parties shall produce such additional evidence as the panel may deem necessary to an understanding and determination of the dispute. The panel shall be the judge of relevancy and materiality of the evidence offered. All evidence shall be taken in the presence of the panel and of the parties.

E. Exhibits offered by the teacher or the division superintendent may be received in evidence by the panel and, when so received, shall be marked and made a part of the record.

F. The facts found and recommendations made by the panel shall be arrived at by a majority vote of the panel members.

G. The hearing may be reopened by the panel on its own motion or upon application of the teacher or the division superintendent for good cause shown to hear after-discovered evidence at any time before the panel's report is made.

H. The panel shall make a written report which shall include its findings of fact and recommendations and shall file it with the members of the school board, the division superintendent and the teacher, not later than thirty days after the completion of the hearing.

I. A stenographic record or tape recording of the proceedings shall be taken. However, in proceedings concerning grievances not related to dismissal or probation, the recording may be dispensed with entirely by mutual consent of the parties. In such proceedings, if the recording is not dispensed with, the two parties shall share the cost of the recording equally; if either party requests a transcript, that party shall bear the expense of its preparation.

In cases of dismissal or probation, a record or recording of the proceedings shall be made and preserved for a period of six months. If either the teacher or the school board requests that a transcript of the record or recording be made at any time prior to expiration of the six-month period, it shall be made and copies shall be furnished to both parties. The school board shall bear the expense of the recording and the transcription.

J. The teacher shall bear his or her own expenses. The school board shall bear the expenses of the division superintendent. The expenses of the panel shall be borne one-half by the school board and one-half by the teacher.

K. The parties shall set the per diem rate of the panel. If the parties are unable to agree on the per diem, it shall be fixed by the judge of the circuit court. No employee

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of the school division shall receive such per diem for service on a panel during his normal work hours if he receives his normal salary for the period of such service.

L. The recommendations and findings of fact of the panel submitted to the school board shall be based exclusively upon the evidence presented to the panel at the hearing.

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

Code of Va., § 22.1-313{ XE "zz:Code of Va 22.1-313" } Decision of school board; generally "A. The school board shall retain its exclusive final authority over matters concerning employment and supervision of its personnel, including dismissals, suspensions and placing on probation.

B. In the case of a hearing before the school board, the school board shall give the teacher its written decision within thirty days after the hearing. A record of the proceedings shall be taken and made available as provided in subsection I of § [22.1-312](#). Witnesses who are employees of the school board shall be granted release time if the hearing is held during the school day. The hearing shall be held at the school in which most witnesses work, if feasible. In the case of a hearing before a fact-finding panel, the school board shall give the teacher its written decision within thirty days after the school board receives both the transcript of such hearing, if any, and the panel's findings of fact and recommendations; however, should there be a further hearing before the school board, as hereafter provided, such decision shall be furnished the teacher within thirty days after such further hearing. The decision of the school board shall be reached after considering the transcript, if any, and the findings of fact and recommendations of the panel and such further evidence as the school board may receive at any further hearing.

C. A teacher may be dismissed, suspended or placed on probation by a majority of a quorum of the school board. In the event the school board's decision is at variance with the recommendations of the fact-finding panel, the school board shall be required to conduct an additional hearing which shall be public unless the teacher requests a private one. However, if the fact-finding hearing was held in private, the additional hearing shall be held in private. The hearing shall be conducted by the school board pursuant to subsection D of this section, except that the grievant and the division superintendent shall be allowed to appear, to be represented, and to give testimony. However, the additional hearing shall not include examination and

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cross-examination of any other witnesses. The school board's written decision shall include the rationale for the decision.

D. In any case in which a further hearing by a school board is held after a hearing before a fact-finding panel, the school board shall consider at such further hearing the transcript, if any, the findings and recommendations of the fact-finding panel and such further evidence, including that of witnesses having testified before the panel, as the school board deems appropriate or as may be offered on behalf of the grievant or the respondent. A school board may initiate any such hearing upon written notice to the teacher and the division superintendent within ten days after the board receives the findings of fact and recommendations of the panel and any transcript of any panel hearing. Such notice shall specify each matter to be inquired into by the school board. In any case in which a teacher may initiate any such hearing, the teacher shall request such hearing in writing within ten days after receiving the findings of fact and recommendations of the panel and any transcript of the panel hearing. Any decision by the school board shall be based solely on the transcript, if any, the findings of fact and recommendations of the panel, and any evidence relevant to the issues of the original grievance adduced at the hearing in the presence of each party. Such hearing shall be conducted as a hearing by the school board as provided in § [22.1-311](#).

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

Code of Va., § 22.1-314{ XE "zz:Code of Va 22.1-314" } Decision of school board; issue of grievability; appeal "Decisions regarding whether or not a matter is grievable shall be made by the school board at the request of the school division administration or grievant and such decision shall be made within ten days of such request. The school board shall reach its decision only after allowing the school division administration and the grievant opportunity to present written or oral arguments regarding grievability. The decision as to whether the arguments shall be written or oral shall be in the discretion of the school board. Decisions of the school board may be appealed to the circuit court having jurisdiction in the school division for a hearing on the issue of grievability.

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Proceedings for review of the decision of the school board shall be instituted by filing a notice of appeal with the school board within ten days after the date of the decision and giving a copy thereof to all other parties. Within ten days thereafter, the school board shall transmit to the clerk of the court to which the appeal is taken a copy of its decision, a copy of the notice of appeal, and the exhibits. The failure of the school board to transmit the record within the time allowed shall not prejudice the rights of the grievant. The court, on motion of the grievant, may issue a writ of certiorari requiring the school board to transmit the record on or before a certain date. Within ten days of receipt by the clerk of such record, the court, sitting without a jury, shall hear the appeal on the record transmitted by the school board and such additional evidence as may be necessary to resolve any controversy as to the correctness of the record. The court, in its discretion, may receive such other evidence as the ends of justice require. The court may affirm the decision of the school board or may reverse or modify the decision. The decision of the court shall be rendered no later than the fifteenth day from the date of the conclusion of the hearing. Such determination of grievability shall be made subsequent to the reduction of the grievance to writing but prior to any panel or school board hearing or the right to such determination shall be deemed to have been waived. "

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