

PERSONNEL

Procedure for Adjusting Grievances R 5-3Preamble

The Virginia Board of Education adopts the following Procedure for Adjusting Grievances to provide, in accordance with the Standards of Quality for school divisions and the statutory mandate of Chapters 13.1 and 15, Article 3, Title 22.1, of the Code of Virginia, an orderly procedure for resolving disputes concerning application of local school board policies, rules, and regulations as they affect the work of employees, and disciplinary actions which include dismissal or probation.

PART IDefinitions

The following words and terms, when used in these regulations, shall have the following meaning, unless the context clearly indicates otherwise:

"Days" means calendar days unless a different meaning is clearly expressed in this procedure. Whenever any period of time fixed by this procedure shall expire on a Saturday, Sunday, or legal holiday, the period of time for taking action under this procedure shall be extended to the next day if it is not a Saturday, Sunday, or legal holiday.

"Dismissal" means the dismissal of any teacher within the term of such teacher's contract and the non-renewal of a contract of a teacher on a continuing contract.

"Grievance" means, for the purpose of Part II, a complaint or a dispute by a teacher relating to his or her employment, including but not necessarily limited to the application or interpretation of personnel policies, rules, and regulations, ordinances, and statutes; acts of reprisal as a result of utilization of this grievance procedure; and complaints of discrimination on the basis of race, color, creed, political affiliation, handicap, age, national origin, or sex. "Grievance" means, for the purpose of Part III, a complaint or a dispute involving a teacher relating to his or her employment involving dismissal or placing on probation. The term "grievance" shall not include a complaint or dispute by a teacher relating to the establishment and revision of wages or salaries, position classifications, or general benefits; suspension of a teacher or non-renewal of the contract of a teacher who has not achieved continuing contract status; the establishment or contents of ordinances, statutes, personnel policies, procedures, rules, and regulations; failure to promote; or discharge, layoff, or suspension from duties because of decrease in enrollment, decrease in enrollment in a particular subject, abolition of a particular subject, insufficient funding; hiring, transfer, assignment, and retention of teachers within the school division; suspension from duties in emergencies; or 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, these rules, regulations, policies, or procedures as written or

PERSONNEL

Procedure for Adjusting Grievances (continued)

established by the school board is grievable. "Probation" means a period not to exceed one (1) year during which time it shall be the duty of the teacher to remedy those deficiencies which gave rise to the probationary status.

"Teacher" or "teachers" means, for the purpose of Part II, all employees of the school division involved in classroom instruction and all other full-time employees of the school division except those employees classified as supervising employees. "Teacher" means, for the purpose of Part III, all regularly licensed professional public school personnel employed under a written contract as provided by § 22.1-302 of the Code of Virginia by any school division as a teacher or supervisor of classroom teachers but excluding all superintendents.

"Shall file," "shall respond in writing," or "shall serve written notice" means the document is either delivered personally to the grievant or office of the proper school board representative or is mailed by registered or certified mail, return receipt requested, and postmarked within the time limits prescribed by this procedure.

"Supervisory employee" means any person having authority in the interest of the board (i) to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward, or discipline other employees; and (ii) to direct other employees, or (iii) to adjust the grievance of other employees; or (iv) to recommend any action set forth in (i), (ii) or (iii) above, provided that the authority to act as set forth in (i), (ii), (iii), or (iv) requires the exercise of independent judgment and is not merely routine and clerical in nature.

"Written grievance appeal" means a written or typed statement describing the event or action complained of or the date of the event or action, and a concise description of those policies, procedures, regulations, ordinances or statutes upon which the teacher bases his or her claim. The grievant shall specify what he or she expects to obtain through use of the grievance procedure. A statement shall be written upon forms prescribed by the Board of Education and supplied by the local school board.

PART IIGrievance Procedure§ 2.1 Purpose of Part II of this Grievance Procedure

The purpose of Part II of the Procedure for Adjusting Grievances is to provide an orderly procedure for resolving disputes concerning the application, interpretation, or violation of any of the provisions of local school board polices, rules, and regulations as they affect the work of teachers, other than dismissal or probation. An equitable solution of grievances should be secured at the most immediate administrative level. The procedure should not be construed as limiting the right of any teacher to discuss any matter of concern with any member of the school administration. Nor should the

PERSONNEL

Procedure for Adjusting Grievances (continued)

procedure be construed to restrict any teacher's right to seek, or the school division administration's right to provide, review of complaints that are not included within the definition of a grievance. Nothing in this procedure shall be interpreted to limit a school board's exclusive final authority over the management and operation of the school division.

§ 2.2 Grievance Procedure

Recognizing that grievances should be begun and settled promptly, a grievance must be initiated within fifteen (15) working days following either the event giving rise to the grievance, or within fifteen (15) working days following the time when the employee knew or reasonably should have known of its occurrence. Grievances shall be processed as follows:

- A. Step 1 - Informal. The first step shall be an informal conference between the teacher and his or her immediate supervisor (which may be the principal). The teacher shall state the nature of the grievance, and the immediate supervisor shall attempt to adjust the grievance. It is mandatory that the teacher present the grievance informally prior to proceeding to Step 2.
- B. Step 2 - Principal. If for any reason the grievance is not resolved informally in Step 1 to the satisfaction of the teacher, the teacher must perfect his or her grievance by filing said grievance in writing within fifteen (15) working days following the event giving rise to the grievance, or within fifteen (15) working days following the time when the employee knew or reasonably should have known of its occurrence, specifying on the form the specific relief expected. Regardless of the outcome of Step 1, if a written grievance is not, without just cause, filed within the specified time, the grievance will be barred.

A meeting shall be held between the principal (and/or his or her designee) and the teacher (and/or his or her designee) within five (5) working days of the receipt by the principal of the written grievance. At such meeting the teacher and/or other party involved shall be entitled to present appropriate witnesses and to be accompanied by a representative other than an attorney. The principal (and/or his or her designee) shall respond in writing within five (5) working days following such meeting.

The principal may forward to the teacher within five (5) working days from the receipt of the written grievance a written request for more specific information regarding the grievance. The teacher shall file an answer thereto within ten (10) working days, and the meeting must then be held within five (5) days thereafter.

- C. Step 3 - Superintendent. If the grievance is not settled to the teacher's satisfaction In Step 2, the teacher can proceed to Step 3 by filing a written notice of appeal with the superintendent, accompanied by the original grievance appeal form within five

PERSONNEL

Procedure for Adjusting Grievances (continued)

(5) working days after receipt of the Step 2 answer (or the due date of such answer). A meeting shall then be held between the superintendent (and/or his or her designee) and the teacher (and/or his or her designee) at a mutually agreeable time within five (5) working days. At such meeting both the superintendent and the teacher shall be entitled to present witnesses and to be accompanied by a representative who may be an attorney. A representative may examine, cross-examine, question, and present evidence on behalf of a grievance or the superintendent without violating the provisions of § 54-44 of the Code of Virginia. If no settlement can be reached in said meeting, the superintendent (or his or her designee) shall respond in writing within five (5) working days following such meeting. The superintendent or designee may make a written request for more specific information from the teacher, but only if such was not requested in Step 2. Such request shall be answered within ten (10) working days, and the meeting shall be held within five (5) working days of the date on which the answer was received. If the grievance is not resolved to the satisfaction of the teacher in Step 3, the teacher may elect to have a hearing by a fact-finding panel, as provided in Step 4, or after giving proper notice may request a decision by the school board pursuant to Step 5.

D. Step 4 - Fact-Finding Panel. In the event the grievance is not settled upon completion of Step 3, either the teacher or the school board may elect to have a hearing by a fact-finding panel prior to a decision by the school board, as provided in Step 4. If the teacher elects to proceed to Step 4, he or she must notify the superintendent in writing of the intention to request a fact-finding panel and enclose a copy of the original grievance form within five (5) working days after receipt of a Step 3 answer (or the due date of such answer). If the school board elects to proceed to a fact finding panel, the superintendent must serve written notice of the board's intention upon the grievant within fifteen (15) working days after the answer provided by Step 3.

1. Panel. Within five (5) working days after the receipt by the division superintendent of the request for a fact-finding panel, the teacher and the division superintendent shall each select one panel member from among the employees of the school division other than an individual involved in any previous phase of the grievance procedure as a supervisor, witness, or representative. The two (2) panel members so selected shall within five (5) working days of their selection select a third (3) impartial panel member.
2. Selection of Impartial Third Member. In the event that both panel members are unable to agree upon a third (3) panel member within five (5) working days, both members of the panel shall request the chief judge of the circuit court having jurisdiction of the school division to furnish a list of five (5) qualified and impartial individuals from which one (1) individual shall be selected by the two (2) members of the panel to serve as the third (3) member. The individuals named by the chief judge may reside either within or outside the jurisdiction of

PERSONNEL

Procedure for Adjusting Grievances (continued)

the circuit court, be residents of the Commonwealth of Virginia, and 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. Within five (5) days after receipt by the two (2) panel members of the list of fact-finders nominated by the chief judge, the panel members shall meet to select the third (3) panel member. Selection shall be made by alternately deleting names from the list until only one remains. The panel member selected by the teacher shall make the first (1st) deletion. The third (3rd) 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.

3. Holding of Hearing. The hearing shall be held by the panel within thirty (30) calendar days from the date of the selection of the final panel member. The panel shall set the date, place, and time for the hearing 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.
4. Procedure for Fact-Finding Panel.
 - a. 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.
 - b. The panel may ask for statements from the division superintendent and the teacher clarifying the issues involved at the beginning of the hearing and at the discretion of the panel may allow closing statements.
 - c. The parties shall then present their claims in evidence. Witnesses may be questioned by the panel members, or by the teacher and the division superintendent, or their representative. The panel, in its discretion, may vary this procedure, but shall afford full and equal opportunity for all parties to present any material or relevant evidence and shall afford the parties the right of cross-examination.
 - d. The parties shall produce such additional evidence as the panel may deem necessary to an understanding and determination of the dispute. The panel may be the judge of the relevancy and materiality of the evidence offered. All evidence shall be taken in the presence of the panel and of the parties.

PERSONNEL

Procedure for Adjusting Grievances (continued)

- 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 finding of facts and recommendations by the panel shall be based exclusively upon the evidence presented at the hearing and the panel's recommendations shall be arrived at by a majority vote of the panel members.
 - g. On its own motion or upon application of the teacher or division superintendent, the hearing may be reopened by the panel, for good cause shown, to hear after-discovered evidence at any time before its final report is delivered.
 - 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 30 days after the completion of the hearing.
 - i. A stenographic record or tape recording shall be taken of the proceedings. The recording may be dispensed with entirely by mutual consent of the parties. If the recording is not dispensed with, the two parties shall share equally the cost of the recording. If either party requests a transcript, that party shall bear the expense involved in preparing it.
5. Expenses
- a. 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.
 - b. 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 chief judge of the circuit court. No employee of the school division shall receive such per diem for service on a panel during his or her normal working hours if he receives his normal salary for the period of such service.
 - c. 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.
6. Right to Further Hearings

PERSONNEL

Procedure for Adjusting Grievances (continued)

Following a hearing by a fact-finding panel, the teacher shall not have the right to a further hearing by the school board as provided in subsection E (3) of this section. The school board shall have the right to require a further hearing in any grievance proceeding as provided in subsection E (3) of this section.

E. Step 5 - Decision by the School Board

1. If a teacher elects to proceed directly to a determination before the school board as provided for in Step 5, he or she must notify the superintendent in writing of the intention to appeal directly to the board, of the grievance alleged and the relief sought, within five working days after receipt of the answer as required in Step 3 of the due date thereof. Upon receipt of such notice, the school board may elect to have a hearing before a fact-finding panel, as indicated in Step 4, by filing a written notice of such intention with the teacher within 10 working days of the deadline for the teacher's request for a determination by the school board.
2. In the case of a hearing before a fact-finding panel, the school board shall give the grievant its written decision within 30 days after the school board receives both the transcript of such hearing, if any, and the panel's finding of fact and recommendations unless the school board proceeds to a hearing under § 2.2 Subsection E. 3. The decision of the school board shall be reached after considering the transcript, if any; the findings of fact and recommendations of the panel; and such further evidence as the school board may receive at any further hearing which the school board elects to conduct.
3. In any case in which a hearing before a fact-finding panel is held in accordance with Step 4, the local school board may conduct a further hearing before such school board.
 - a. The local school board shall initiate such hearing by sending written notice of its intention to the teacher and the division superintendent within 10 days after receipt by the board of the findings of fact and recommendations of the fact-finding panel and any transcript of the panel hearing. Such notice shall be provided upon forms to be prescribed by the Board of Education and shall specify each matter to be inquired into by the school board.
 - b. In any case where such further hearing is held by a school board after a hearing before the 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, but not limited to, the testimony of those witnesses who have previously testified before the fact-finding panel as the school board deems may be appropriate or as may be offered on behalf of the grievant or the

PERSONNEL

Procedure for Adjusting Grievances (continued)

administration.

- c. The further hearing before the school board shall be set within 30 days of the initiation of such hearing, and the teacher must be given at least 15 days written notice of the date, place, and time of the hearing. The teacher and the division superintendent may be represented by legal counsel or other representatives. The hearing before the school board shall be private, unless the teacher requests a public hearing. The school board shall establish the rules for the conduct of any hearing before it. Such rules shall include the opportunity for the teacher and the division superintendent to make an opening statement and to present all material or relevant evidence, including the testimony of witnesses and the right of all parties or their representatives to cross-examine the witnesses. Witnesses may be questioned by the school board.

The school board's attorney, assistants, or representative, if he, she, 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. A stenographic record or tape recording of the proceedings shall be taken. However, the recording may be dispensed with entirely by mutual consent of the parties. If 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.

- d. The decision of the school board shall be based solely on the transcript, if any; the findings of fact and recommendations of the fact-finding panel, and any evidence relevant to the issues of the original grievance produced at the school board hearing in the presence of each party. The school board shall give the grievant its written decision within 30 days after the completion of the hearing before 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's written decision shall include the rationale for the decision.
4. In any case where a hearing before a fact-finding panel is not held, the board may hold a separate hearing or may make its determination on the basis of the written evidence presented by the teacher and the recommendation of the superintendent.

PERSONNEL

Procedure for Adjusting Grievances (continued)

5. The school board shall retain its exclusive final authority over matters concerning employment and the supervision of its personnel.

§2.3 Grievability

A. Initial Determination of Grievability. Decisions regarding whether a matter is grievable shall be made by the school board at the request of the division superintendent or grievant. The school board shall reach its decision only after allowing the division superintendent 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 shall be made within 10 days of such request. Such determination of grievability shall be made subsequent to the reduction of the grievance to writing but prior to any panel or board hearing or the right to such determination shall be deemed to have been waived. Failure of the school board to make such a determination within such a prescribed 10-day period shall entitle the grievant to advance to the next step as if the matter were grievable.

B. Appeal of Determination on Grievability.

1. 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.
 - a. Proceeding for a review of the decision of the school board shall be instituted by filing a notice of appeal with the school board within 10 days after the date of the decision and giving a copy thereof to all other parties.
 - b. Within 10 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.
 - c. Within 10 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.
 - d. 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 not later

PERSONNEL

Procedure for Adjusting Grievances (continued)

than the fifteenth day from the date of the conclusion of the court's hearing.

§2.4 Time Limitations

The right of any party to proceed at any step of this Part II grievance procedure shall be conditioned upon compliance with the time limitations and other requirements set forth in this procedure.

- A. The failure of the teacher to comply with all substantial procedural requirements, including initiation of the grievance and notice of appeal to the next step in the procedure, shall eliminate the teacher's right to any further proceedings on the grievance unless just cause for such failure can be shown.
- B. The failure of the school board or any supervisory employee to comply with all substantial procedural requirements without just cause shall entitle the grievant, at his or her option, to advance to the next step in the procedure or, at the final step, to a decision in his or her favor.
- C. The determination as to whether the substantial procedural requirements of this Part II of the Procedure for Adjusting Grievances have been complied with shall be made by the school board. In any case in which there is a factual dispute as to whether the procedural requirements have been met or just cause has been shown for failure to comply, the school board shall have the option of allowing the grievant to proceed to its next step. The fact that the grievance is allowed to proceed in such case shall not prevent any party from raising such failure to observe the substantial procedural requirements as an affirmative defense at any further hearing involving the grievance.

§2.5 Separability

If any portion of this Part II of the Procedure for Adjusting Grievances, or the application thereof, shall be held invalid by a court of complete jurisdiction, the remainder of this procedure and the application thereof in all other circumstances where not expressly held invalid shall not be affected thereby.

PART III

Procedure for Dismissals or Placing on Probation

This PART III of the Procedure for Adjusting Grievances adopted by the Board of Education in accordance with the statutory mandate of Article II Chapter 11, Title 22.1 of the Code of Virginia and the Standards of Quality for school divisions, Chapter 667 of the Acts of Assembly, 1980, is to provide an orderly procedure for the expeditious resolution of disputes involving the dismissal or placing on probation of any teacher.

PERSONNEL

Procedure for Adjusting Grievances (continued)A. Notice to teacher of recommendation for dismissal or placing on probation.

1. In the event a division superintendent determines to recommend dismissal of any teacher or the placing on probation of a teacher on a continuing contract, written notice shall be sent to the teacher on forms to be prescribed by the Board of Education notifying him or her of the proposed dismissal or placing on probation and informing the teacher that within 15 days after receiving the notice, the teacher may request a hearing before the school board or before a fact-finding panel as hereinafter set forth.
2. During such 15-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.
3. At the request of the teacher, the 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 10 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.

§3.1 Procedure for Dismissals or Placing on ProbationA. Notice to teacher of recommendation for dismissal or placing on probation.

Within 10 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 cost of copying such documents shall be paid by the requesting party.

B. Fact-Finding Panel. Within 15 days after the teacher receives the notice referred to in § 3.1 subsection A.1. either the teacher or the school board, by written notice to the other party upon a form to be prescribed by the Board of Education, may elect to have a hearing before a fact-finding panel prior to any decision by the school board.

1. Panel. Within five working days after the receipt by the division superintendent of the request for a fact-finding panel, the teacher and the division superintendent shall each select one panel member from among the employees of the school division other than an individual involved in the recommendation of dismissal or placing on probation as a supervisor, witness,

PERSONNEL

Procedure for Adjusting Grievances (continued)

or representative. The two panel members so selected shall within five working days of their selection select a third impartial panel member.

2. Selection of Impartial Third Member. In the event that both panel members are unable to agree upon a third panel member within five working days, both members of the panel shall request the chief judge of the circuit court having jurisdiction of the school division to furnish a list of five qualified and impartial individuals from which list one individual shall be selected by the two members of the panel as the third member. The individuals named by the chief judge may reside either 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. Within five days after receipt by the two panel members of the list of fact finders nominated by the chief judge, the panel members shall meet to select the third member. Selection shall be made by the panel members, alternately deleting names from the list until only one remains with the panel member selected by the teacher to make the first deletion. 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.
3. Holding of Hearing. The hearing shall be held by the panel within 30 calendar days from the date of the selection of the final panel member. The panel shall set the date, place, and time for the hearing 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.
 - a. 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.
4. Procedure for Fact-Finding Panel.
 - a. The panel may ask for statements from the division superintendent and the teacher (or their representative) clarifying the issues involved at the beginning of the hearing and at the discretion of the panel may allow closing statements.
 - b. The parties shall then present their claims in evidence. Witnesses may be questioned by the panel members and by the teacher and the division superintendent or their representative. However, the panel may, at its

PERSONNEL

Procedure for Adjusting Grievances (continued)

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.

- c. 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.
 - d. 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.
 - e. The facts found and recommendations made by the panel shall be based exclusively upon the evidence presented to the panel at the hearing and such facts found and recommendations made shall be arrived at by a majority vote of the panel members.
 - f. The hearing may be reopened by the panel at any time before the panel's report is made upon its own motion or upon application of the teacher or the division superintendent for good cause shown to hear after-discovered evidence.
 - g. 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 30 days after the completion of the hearing.
 - h. A stenographic record or tape recording of the proceedings shall be taken. 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.
5. Expenses.
- a. 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.

PERSONNEL

Procedure for Adjusting Grievances (continued)

- b. 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 chief judge of the circuit court. No employee of the school division shall receive such per diem for service on a panel during his or her normal working hours if he or she receives his or her normal salary for the period of such service.
6. Right to Further Hearing. If the school board elects to have a hearing by a fact-finding panel on the dismissal or placing on probation of a teacher, the teacher shall have the right to a further hearing by the school board as provided in subsection "C" of this section. The school board shall have the right to require a further hearing as provided in subsection "C" also.
7. Witnesses. 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.

C. Hearing by School Board

1. After receipt of the notice of pending dismissal or placing on probation described in § 3.1 Subsection A.1, the teacher may request a hearing before the school board by delivering written notice to the division superintendent within 15 days from the receipt of notice from the superintendent. Subsequent to the hearing by a fact-finding panel under § 3.1 Subsection B., the teacher, as permitted by § 3.1 Subsection B.6., or the school board may request a school board hearing by written notice to the opposing party and the division superintendent within 10 days after the receipt by the party initiating such hearing of the findings of fact and recommendations made by the fact-finding panel and the transcript of the panel hearing. Such notice shall be provided upon a form to be prescribed by the Board of Education and shall specify each matter to be inquired into by the school board.
2. In any case in which a further hearing is held by a school board after a hearing before the fact-finding panel, the school board shall consider at such further hearing the record, or transcript, if any, the findings of fact and recommendations made by the fact-finding panel and such further evidence, including, but not limited to, the testimony of those witnesses who have previously testified before the fact-finding panel as the school board deems may be appropriate or as may be offered on behalf of the teacher or the superintendent.
3. The school board hearing shall be set and conducted within 30 days of the receipt of the teacher's notice or the giving by the school board of its notice. The teacher shall be given at least 15 days written notice of the date, place, and time of the hearing and such notice shall be provided to the division

PERSONNEL

Procedure for Adjusting Grievances (continued)

superintendent.

4. The teacher and the division superintendent may be represented by legal counsel or other representatives. The hearing before the school board shall be private, unless the teacher requests a public hearing. The school board shall establish the rules for the conduct of any hearing before it. Such rules shall include the opportunity for the teacher and the division superintendent to make an opening statement and to present all material or relevant evidence, including the testimony of witnesses and the right of all parties to cross-examine the witnesses. Witnesses may be questioned by the school board.
5. 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 board shall bear the expense of the recording and the transcription.

§3.1 Procedure for Dismissals or Placing on Probation (cont) C.4

6. The school board shall give the teacher its written decision within 30 days after the completion of the hearing before the school board.
7. The decision by the school board shall be based on the transcript, the findings of fact, and recommendations made by the fact-finding panel, and any evidence relevant to the issues of the original grievance produced at the school board hearing in the presence of each party.

The school board's attorney, assistants, or representative, if he, she, 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.

D. School Board Determination

1. In any case in which a hearing is held before a fact-finding panel but no further hearing before the school board is requested by either party, the school board shall give the teacher its written decision within 30 days after the school board receives both the transcript of such hearing and the panel's findings of fact and

PERSONNEL

Procedure for Adjusting Grievances (continued)

recommendations. The decision of the school board shall be reached after considering the transcript, the findings of fact, and the recommendations made by the panel.

2. The school board may dismiss, suspend, or place on probation a teacher upon majority vote 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's written decision shall include the rationale for the decision.

§3.2 Time Limitations

The right of any party to proceed at any step of the grievance procedure shall be conditioned upon compliance with the time limitations and other requirements set forth in this grievance procedure.

- A. The failure of the grievant to comply with all substantial procedural requirements shall terminate the teacher's right to any further proceedings on the grievance unless just cause for such failure can be shown.
- B. The failure of the school board or of any supervisory employee to comply with all substantial procedural requirements without just cause shall entitle the grievant, at his or her option, to advance to the next step in the procedure or, at the final step, to a decision in his or her favor.
- C. The determination as to whether the substantial procedural requirements of this Part III of the Procedure for Adjusting Grievances have been complied with shall be made by the school board. In any case in which there is a factual dispute as to whether the procedural requirements have been met or just cause has been shown for failure to comply, the school board shall have the option of allowing the grievance to proceed to its next step. The fact that the grievance is allowed to proceed in such case shall not prevent any party from raising such failure to observe the substantial procedural requirements as an affirmative defense at any further hearing involving the grievance.

§3.3 Separability

If any portion of this Part III of the Procedure for Adjusting Grievances, or the application thereof, shall be held invalid by a court of competent jurisdiction, the remainder of this procedure and the application thereof in all other circumstances where not expressly held invalid shall not be affected thereby.

Regulatory Authority: (1988)

State Board of Education Regulations, "Procedures for Adjusting Grievances," (1980 as

PERSONNEL

Procedure for Adjusting Grievances (continued)

amended 1983, 1985, 1987, and 1988).

Editor's Note: See also school board policy # 5-3 and the legal references thereto.

Approved by School Board: September 19, 1972

Revised by School Board: March 20, 1973

Revised by School Board: June 19, 1973

Revised by School Board: November 27, 1979

Revised by School Board: September 18, 1984

Revised by School Board: September 3, 1985

Revised by School Board: August 5, 1986

Revised by School Board: August 1, 1989

Revised by School Board: February 1, 1994

PERSONNEL

Procedure for Adjusting Grievances (continued)