

# Board of Education Agenda Item

Item: E

Date: September 22, 2004

**Topic:** First Review of Proposed Technical Revisions to the Regulations Governing Procedures for Adjusting Grievances of School Personnel (8 VAC 20-90-10 et seq.)

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## Origin:

Topic presented for information only (no board action required)

Board review required by

State or federal law or regulation

Board of Education regulation

Other: \_\_\_\_\_

Action requested at this meeting  Action requested at future meeting: 10-28-04 (date)

## Previous Review/Action:

No previous board review/action

Previous review/action

date \_\_\_\_\_

action \_\_\_\_\_

## Background Information:

The Virginia Board of Education regulations, the Procedure for Adjusting Grievances (8 VAC 20-90-10 et seq.) have been reviewed. Based on this review, revisions are needed to align the regulations with changes in the Code of Virginia. All revisions, except for a few citation references, are exact language changes from the Code.

The Administrative Process Act (Section 2.2-4006 of the Code of Virginia) exempts changes to regulations that are necessary to conform to changes in Virginia statutory law where no agency discretion is involved from its requirements.

## Summary of Major Elements:

The revised Procedure for Adjusting Grievances is attached. New language is underlined and deleted language is noted with strikeouts. Also attached is a chart highlighting the revisions and the Code reference for each change.

The changes were made to align the regulations with the Code of Virginia; therefore, the regulations should be exempted from the public participation process of the Administrative Process Act. Upon approval of the regulations by the Board of Education, the Department of Education will request that the regulations be published in the *Virginia Register of Regulations* in final form.

The Code of Virginia requires that the Board of Education prescribe forms used in the grievance procedure. The forms are not incorporated in the regulations; however, the “Notification: Notice of Proposed Dismissal or Proposed Placing on Probation” form needs revision requiring approval by the board.

**Superintendent's Recommendation:**

The Superintendent of Public Instruction recommends that the Board of Education accept the proposed Regulations Governing Procedures for Adjusting Grievances of School Personnel for first review.

**Impact on Resources:** The amendment of the regulation as proposed is not expected to have a fiscal and administrative impact on school divisions or on the Department of Education.

**Timetable for Further Review/Action:**

It is anticipated that this item will be placed on the Board of Education’s October 28, 2004, agenda for final review. Following the final approval of the proposed amendment of the regulation by the board, the regulation will be submitted to the Attorney General for authorization. Following receipt of the authorization, it will be submitted to the Registrar’s Office for publication.

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*VIRGINIA BOARD OF EDUCATION  
REGULATIONS*

**PROCEDURE FOR  
ADJUSTING  
GRIEVANCES**

8 VAC 20-90-10 et seq.

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**REVISIONS TO THE PROCEDURE FOR ADJUSTING GRIEVANCES  
8 VAC 20-90-10 et seq.**

Revisions in the Procedure for Adjusting Grievances	Rationale for Revision
<p style="text-align: center;"><i>8 VAC 20-90-10 et seq.</i></p> <p>The term “working day” was replaced with “business day” throughout the regulations to comport with the language of the Code.</p>	<p>Exact language change From the <u>Code of Virginia</u> § 22.1-312, N.</p>
<p style="text-align: center;"><i>8 VAC 20-90-30, B</i></p> <p>The principal may forward to the teacher within five days from the receipt of the written grievance a written request for more specific information regarding the grievance. The teacher shall file an answer <del>to that</del> <u>thereto</u> within 10 <del>working</del> <u>business</u> days, and the meeting must then be held within five <u>business</u> days after <del>that</del> <u>thereafter</u>.</p>	<p>Editorial Revision (no substantive change)</p>
<p><b>8 VAC 20-90-30, D, 2</b> <b>Selection of Impartial Third Member.</b> In the event that both panel members are unable to agree upon a third panel member within five <del>working</del> <u>business</u> 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 one individual shall be selected by the two members of the panel to serve as the third member. The individuals named by the chief judge may reside either within or outside the jurisdiction of the circuit court, be residents of the Commonwealth of Virginia, and <u>in all cases shall</u> possess some knowledge and expertise in public education and education law and shall be deemed by the judge to be capable of presiding over an administrative hearing. Within five <u>business</u> 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 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 deletion. The third impartial panel member shall chair the panel. No elected official shall serve as a panel member. <u>Panel members shall not be parties to, or witnesses to, the matter grieved. 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.</u></p> <p><u>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.</u></p>	<p>Exact language change From the <u>Code of Virginia</u> § 22.1-312, A.</p>

<p><b>8 VAC 20-90-30, D, 3</b>  3. <b>Holding of Hearing.</b> The hearing shall be held by the panel within 30 <del>calendar</del> business days from the date of 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.</p>	<p>Exact language change  From the  <u>Code of Virginia</u>  §22.1-308.4  § 22.1-312, A.</p>
<p><b>8 VAC 20-90-30, D, 4, b &amp; c</b>  b. The panel may ask, <u>at the beginning of the hearing,</u> for statements from the division superintendent and the teacher clarifying the issues involved. <del>at the beginning of the hearing and at the discretion of the panel may allow closing statements.</del>  c. The parties shall then present their claims <del>in</del> and evidence. Witnesses may be questioned by the panel members, <del>or by</del> the teacher and the division superintendent. <del>or their representative.</del> The panel <u>may, in</u> at its discretion, <del>may</del> vary this procedure, but shall afford full <u>and</u> equal opportunity <del>for to</del> all parties to present any material or relevant evidence and shall afford the parties the right of cross-examination.</p>	<p>Exact language change  From the  <u>Code of Virginia</u>  § 22.1-312, D.</p>
<p><b>8 VAC 20-90-30, D, 4, d</b>  d. The parties shall produce such additional evidence as the panel may deem necessary to an understanding and determination of the dispute. The panel <del>may</del> <u>shall</u> 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</p>	<p>Exact language change  From the  <u>Code of Virginia</u>  § 22.1-312, D.</p>
<p><b>8 VAC 20-90-30, D, 4, f&amp;g</b>  f. The <del>finding of facts</del> <u>facts found</u> and recommendations <u>made</u> by the panel shall be <del>based exclusively upon the evidence presented at the hearing and the panel's recommendations shall be</del> arrived at by a majority vote of the panel members.  g. <del>On its own motion or upon application of the teacher or division superintendent,</del> <u>The hearing may be reopened by the panel, on its own motion or upon application of the teacher or the division superintendent</u> for good cause shown, <del>at any time to hear after-discovered evidence at any time before its final report is delivered</del> <u>the panel's report is made.</u></p>	<p>Exact language change  From the  <u>Code of Virginia</u>  § 22.1-312, F.   Exact language change  From the  <u>Code of Virginia</u>  § 22.1-312, G.</p>
<p><b>8 VAC 20-90-30, D, 4, h.</b>  The panel shall make a written report that 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 <u>business</u> days after the completion of the hearing.</p>	<p>Exact language change  From the  <u>Code of Virginia</u>  § 22.1-312, H.</p>

<p><b>8 VAC 20-90-30, D, 4, i &amp; j</b></p> <p>i. A stenographic record or tape recording <u>of the proceedings</u> shall be taken <del>of the proceedings</del>. <u>However, in proceedings concerning grievances not related to dismissal or probation</u>, the recording may be dispensed with entirely by mutual consent of the parties. <u>In such proceedings</u>, <del>if</del> 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 <del>involved in preparing it</del> <u>of its preparation</u>.</p> <p><u>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.</u></p> <p>j. <u>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. No panel member shall conduct an independent investigation involving the matter grieved.</u></p>	<p>Exact language change From the <u>Code of Virginia</u> § 22.1-312, I.</p> <p>Exact language change From the <u>Code of Virginia</u> § 22.1-312, L.</p>
<p><b>8 VAC 20-90-30, D, 5, a</b></p> <p>a. The teacher shall bear his <u>or her</u> 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.</p>	<p>Exact language change From the <u>Code of Virginia</u> § 22.1-312, J.</p>
<p><b>8 VAC 20-90-30, E, 2</b></p> <p>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 <del>§2.2 Subsection E.3</del> <u>Subdivision E.3. of this section</u>. 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 that the school board elects to conduct.</p>	<p>Editorial Revision To locate referenced citation (no substantive change)</p>
<p><b>8 VAC 20-90-30, E, 3, a</b></p> <p>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.</p> <p>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 <u>business</u> 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.</p>	<p>Exact language change From the <u>Code of Virginia</u> § 22.1-313, D.</p>

<p><b>8 VAC 20-90-30, E, 3, c</b>  A stenographic record or tape recording of the proceedings shall be taken. However, <u>in proceedings concerning grievances not related to dismissal or Probation</u>, the recording may be dispensed with entirely by mutual consent of the parties. <u>In such proceedings, if the recording is not dispensed with</u>, 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.</p> <p><u>In the case 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.</u></p>	<p>Exact language change  From the  <u>Code of Virginia</u>  § 22.1-312, I.</p>
<p><b>8 VAC 20-90-40, A</b>  <b>A. Initial Determination of Grievability.</b> 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 <u>business</u> 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-<u>business</u> day period shall</p>	<p>Exact language change  From the  <u>Code of Virginia</u>  § 22.1-314</p>
<p><b>8 VAC 20-90-40, B, 1, a, b, &amp; c</b>  a. Proceedings 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 <u>business</u> days after the date of the decision and giving a copy thereof to all other parties.</p> <p>b. Within 10 <u>business</u> 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.</p> <p>c. Within 10 <u>business</u> 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.</p>	<p>Exact language change  From the  <u>Code of Virginia</u>  § 22.1-314</p>

<p><b>8 VAC 20-90-70, A, 3</b></p> <p>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. 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. <u>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.</u> The cost of copying such documents shall be paid by the requesting party.</p>	<p>Exact language change From the <u>Code of Virginia</u> § 22.1-309</p>
<p><b>8 VAC 20-90-70, B</b></p> <p>B. <b>Fact-Finding Panel.</b> Within 15 days after the teacher receives the notice referred to in <del>§3.1 Subsection A.1. Subdivision A1 of this section</del>, 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.</p>	<p>Editorial Revision To locate referenced citation (no substantive change)</p>

<p><b>8 VAC 20-90-70, B, 2</b></p> <p>1. <b>Selection of Impartial Third Member.</b> In the event that both panel members are unable to agree upon a third panel member within five <del>working</del> <u>business</u> 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 <u>business</u> 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 panel 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. <u>Panel members shall not be parties to, or witnesses to, the matter grieved. 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.</u></p> <p><u>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 of 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.</u></p>	<p>Exact language change From the <u>Code of Virginia</u> § 22.1-312, A.</p>
<p><b>8 VAC 20-90-70, B, 3</b></p> <p>3. <b>Holding of Hearing.</b> The hearing shall be held by the panel within 30 <del>calendar</del> <u>business</u> 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 legal counsel or another representative.</p>	<p>Exact language change From the <u>Code of Virginia</u> <del>§22.1-308,4</del> § 22.1-312, A.</p>

<p><b>8 VAC 20-90-70, B, 4,b&amp;c</b></p> <p>b. The panel may ask, <u>at the beginning of the hearing</u>, for statements from the division superintendent and the teacher (or their representative) clarifying the issues involved, <del>at the beginning of the hearing and at the discretion of the panel may allow closing statements.</del></p> <p>c. The parties shall then present their claims <del>in</del> <u>and</u> evidence. Witnesses may be questioned by the panel members, <del>and by</del> the teacher and the division superintendent <del>or their representative</del>. However, 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.</p>	<p>Exact language change From the <u>Code of Virginia</u> § 22.1-312, D.</p>
<p><b>VAC 20-90-70, B, 4, f, g, &amp;j</b></p> <p>f. <u>The facts found and recommendations made by the panel shall be arrived at by a majority vote of the panel members.</u></p> <p><del>fg. The facts found and recommendations and findings of fact made by of 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. No panel member shall conduct an independent investigation involving the matter grieved.</del></p> <p>kj. A stenographic record or tape recording of the proceedings shall be taken. <u>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.</u></p>	<p>Exact language change From the <u>Code of Virginia</u> § 22.1-312, F.</p> <p>Exact language change From the <u>Code of Virginia</u> § 22.1-312, L.</p> <p>Exact language change From the <u>Code of Virginia</u> § 22.1-312, I.</p>
<p><b>VAC 20-90-70, C, 1.</b></p> <p>1. After receipt of the notice of pending dismissal or placing on probation described in <del>§3.1 Subsection A. 1. Subdivision A1 of this section</del>, 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 <del>§3.1 Subsection B. Subdivision B</del>, the teacher, as permitted by <del>§3.1 Subsection B. 6. Subdivision B7 of this section</del>, or the school board may request a school board hearing by written notice to the opposing party and the division superintendent within 10 <u>business</u> 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.</p>	<p>Editorial Revision to locate referenced citation (no substantive change)</p> <p>Exact language change From the <u>Code of Virginia</u> § 22.1-313, D.</p>

<p><b>8 VAC 20-90-70 C, 4</b></p> <p>4. The teacher and the division superintendent may be represented by legal counsel and another representative. 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. <u>The school board may hear a recommendation for dismissal and make a determination whether to make a recommendation to the Board of Education regarding the teacher's license at the same hearing or hold a separate hearing for each action.</u></p>	<p>Exact language change From the <u>Code of Virginia</u> §22.1-311</p>
<p><b>VAC 20-90-70, D, 2</b></p> <p>2. The school board may dismiss, suspend, or place on probation a teacher upon a 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 decision is at variance with the recommendation of the fact finding panel, <del>the school board's written decision shall include the rationale for the decision</del> <u>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 8 VAC 20-90-60.C1&amp;2, 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 cross-examination of any other witnesses. The school board's written decision shall include the rationale for the decision.</u></p>	<p>Exact language change From the <u>Code of Virginia</u> §22.1-313</p>

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## Procedure for Adjusting Grievances

### PART I Definitions

#### 8 VAC 20-90-10 Definitions

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 nonrenewal of a contract of a teacher on a continuing contract.

**"Grievance"** means, for the purpose of Part II (8 VAC 20-90-20 et seq.), a complaint or a dispute by a teacher relating to his or her employment, including but not necessarily limited to disciplinary actions other than dismissal or placing on probation; the application or interpretation of personnel policies, procedures, rules, and regulations, ordinances, and statutes; 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 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 (8 VAC 20-90-60 et seq.), 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 nonrenewal of the contract of a teacher who has not achieved continuing contract status; the establishment or contents of ordinances, statutes, or personnel policies, procedures, rules, and regulations; failure to promote; discharge, layoff, or suspension from duties because of decrease in enrollment, decrease in enrollment or abolition of a particular subject or insufficient funding; hiring, transfer,

## Procedure for Adjusting Grievances

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 established by the school board is grievable.

**"Personnel file"** means, for the purpose of Part III (8 VAC 20-90-60), 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~~ regarding the teacher maintained within a school in which the teacher serves.

**"Probation"** means a period not to exceed one year during which time it shall be the duty of the teacher to remedy those deficiencies that gave rise to the probationary status.

**"Teacher"** or **"teachers"** means, for the purpose of Part II (8 VAC 20-90-20 et seq.), 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 (8VAC 20-90-60 et seq.), 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 seeks through the 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 II Grievance Procedure

### 8 VAC 20-90-20 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 policies, procedures, 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 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.

### 8 VAC 20-90-30 Grievance Procedure

Recognizing that grievances should be begun and settled promptly, a grievance must be initiated within 15 ~~working~~ business days following either the event giving rise to the grievance, or within 15 ~~working~~ business 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 presents the grievance informally prior to proceeding to Step 2.
- B. **Step 2 - Principal.** If for any reason the grievance is not resolved informally to the satisfaction of the teacher in Step 1, the teacher must perfect his or her grievance by filing said grievance in writing within 15 ~~working~~ business days following the event giving rise to the grievance, or within 15 ~~working~~ business days following the time when the employee knew or reasonably should have known of its occurrence, specifying on the form the specific relief sought. 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.

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A meeting shall be held between the principal (or his or her designee or both) and the teacher (or his or her designee or both) within five working business 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 represented by legal counsel and another representative. The principal (or his or her designee or both) shall respond in writing within five working business days following such meeting.

The principal may forward to the teacher within five days from the receipt of the written grievance a written request for more specific information regarding the grievance. The teacher shall file an answer ~~to that~~ thereto within 10 working business days, and the meeting must then be held within five business days ~~after that~~ 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 working business days after receipt of the Step 2 answer (or the due date of such answer). A meeting shall then be held between the superintendent (or his or her designee or both) and the teacher (or his or her designee or both) at a mutually agreeable time within five working business days. At such meeting both the superintendent and the teacher shall be entitled to present witnesses and to be represented by legal counsel and another representative. A representative may examine, cross-examine, question, and present evidence on behalf of a grievant or the superintendent without violating the provisions of §54.1-3904 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 working business 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 10 working business days, and the meeting shall be held within five working business 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 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 working business 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 to the grievant within 15 working business days after the answer provided by Step 3.
1. **Panel.** Within five working business 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 panel members so selected shall within five working business 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 business 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 one individual shall be selected by the two members of the panel to serve as the third member. The individuals named by the chief judge may reside either within or outside 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 to be capable of presiding over an administrative hearing. Within five business 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 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 deletion. The third impartial panel member shall chair the panel. No elected official shall serve as a panel member. Panel members shall not be parties to, or witnesses to, the matter grieved. With the agreement of the teacher's and division superintendent's panel members, the impartial panel member shall

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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 of 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.

3. **Holding of Hearing.** The hearing shall be held by the panel within 30 ~~calendar~~ business days from the date of 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, at the beginning of the hearing, 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~~ and evidence. Witnesses may be questioned by the panel members, ~~or by the teacher and the division superintendent. or their representative.~~ The panel may, ~~in~~ at its discretion, ~~may~~ vary this procedure, but shall afford full and equal opportunity ~~for~~ to all parties to present any material or relevant evidence and shall afford the parties the right of cross-examination.

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- 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~~ shall 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.
- 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~~ facts found and recommendations made 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, on its own motion or upon application of the teacher or the division superintendent for good cause shown, at any time to hear after-discovered evidence at any time before its final report is delivered the panel's report is made.
- h. The panel shall make a written report that 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 business days after the completion of the hearing.
- i. A stenographic record or tape recording of the proceedings shall be taken ~~of the proceedings~~. 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 equally the cost of the recording. If either party requests a transcript, that party shall bear the expense ~~involved in preparing it~~ 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 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. No panel member shall conduct an independent investigation involving the matter grieved.

**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 business hours if he or she receives the 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**

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 business days after

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receipt of the answer as required in Step 3 or 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~~ business 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~~ Subdivision E.3. of this section. 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 that 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 administration.

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- 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 and another representative. 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, 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 the case 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

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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.

- 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.
3. 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.
4. The school board shall retain its exclusive final authority over matters concerning employment and the supervision of its personnel.

### 8 VAC 20-90-40 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 business 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-business 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. Proceedings 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 business days after the date of the decision and giving a copy thereof to all other parties.
  - b. Within 10 business 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 business 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 than the fifteenth day from the date of the conclusion of the court's hearing.

**8 VAC 20-90-50 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.

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- 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.

**PART III**  
**Procedure for Dismissals or Placing on Probation and Time Limitations**

**8 VAC 20-90-60 Dispute Resolution**

This Part III of the Procedure for Adjusting Grievances adopted by the Board of Education in accordance with the statutory mandate of Article 3, Chapter 15, Title 22.1 of the Code of Virginia and the Standards of Quality for school divisions, is to provide an orderly procedure for the expeditious resolution of disputes involving the dismissal or placing on probation of any teacher.

**8 VAC 20-90-70 Procedure for Dismissals or Placing on Probation**

**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 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. 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 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.

- B. **Fact-Finding Panel.** Within 15 days after the teacher receives the notice referred to in ~~§3.1 Subsection A.1. Subdivision A1~~ of this section, 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~~ business 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, or representative. The two panel members so selected shall within five ~~working~~ business 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~~ business 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 business 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 panel 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. Panel members shall not be parties to, or witnesses to, the matter grieved. With the agreement of the

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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 of 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.

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 legal counsel or another representative.
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, at the beginning of the hearing, 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.~~
  - c. The parties shall then present their claims ~~in~~ and 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 discretion, vary this procedure but shall afford full and equal opportunity to all parties for

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presentation of 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 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 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.
- fg. ~~The facts found and recommendations and findings of fact made by of 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. No panel member shall conduct an independent investigation involving the matter grieved.~~
- gh. 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.
- hi. The panel shall make a written report that 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.
- kj. 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.

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~~ business 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. Subdivision A1~~ of this section, 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. Subdivision B.~~ the teacher, as permitted by ~~§3.1 Subsection B. 6. Subdivision B7~~ of this section, or the school board may request a school board hearing by written notice to the opposing party and the division superintendent within 10 business 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 finding 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 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 also be provided to the division superintendent.
4. The teacher and the division superintendent may be represented by legal counsel and another representative. 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

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the school board. The school board may hear a recommendation for dismissal and make a determination whether to make a recommendation to the Board of Education regarding the teacher's license at the same hearing or hold a separate hearing for each action.

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.
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 recommendations. The decision of the school

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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 a 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 decision is at variance with the recommendation of the fact finding panel, the school board's written decision shall include the rationale for the decision~~ 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 8 VAC 20-90-60,C1&2, 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 cross-examination of any other witnesses. The school board's written decision shall include the rationale for the decision.

### 8 VAC20-90-80 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.

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- 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.

### **8 VAC20-90-90 Forms**

- A. Principal's Decision
- B. Request for Hearing
- C. Notice of Proposed Dismissal or Proposed Placing on Probation

# **FORMS FOR PART II OF THE PROCEDURE FOR ADJUSTING GRIEVANCES**

*Enclosed herein are the necessary forms for adjusting grievances in accordance with Part II of the Grievance Procedure of the State Board of Education.*

*The grievant is advised to become familiar with the procedure for adjusting grievances. Special emphasis should be given to the procedural steps.*

*VIRGINIA BOARD OF EDUCATION*

## STATEMENT OF GRIEVANCE

### STEP 2 – TO BE PRESENTED TO PRINCIPAL

Name of grievant	Date filed
School/department of assignment	Subject area or grade
Immediate superior and/or principal	Grievant's representative
Policy, procedure, regulation, ordinance, statute being grieved, and date you knew of reasonably should have known of its occurrence:	

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Statement of grievance:

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Specific relief requested:

Grievant's signature	Representative's signature
Date	Date

## PRINCIPAL'S DECISION

### STEP 2 – DECISION TO BE PRESENTED TO GRIEVANT

Name of grievant	Date grievance received
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Decision of principal or designee:

\_\_\_ I lack the authority to grant the relief requested.

Signature of principal or designee	Date								
Is the above decision acceptable to grievant?	<table style="width: 100%; border: none;"> <tr> <td style="width: 50%; text-align: center;">Yes</td> <td style="width: 50%; text-align: center;"><u>Check one box</u> No</td> </tr> <tr> <td style="text-align: center;"> </td> <td></td> </tr> <tr> <td style="text-align: center;"> </td> <td></td> </tr> <tr> <td style="text-align: center;"> </td> <td></td> </tr> </table>	Yes	<u>Check one box</u> No						
Yes	<u>Check one box</u> No								

\_\_\_ I hereby appeal this decision to Step 3, Superintendent's Level.

Grievant's signature	Date
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## SUPERINTENDENT'S LEVEL

### STEP 3 – DECISION TO BE PRESENTED TO GRIEVANT

Name of grievant	Date appeal received
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Decision of superintendent or designee:

Signature of principal or designee	Date										
Is the above decision acceptable to the grievant?	<table style="width: 100%; border: none;"> <tr> <td style="width: 50%;"></td> <td style="text-align: center;"><u>Check one box</u></td> </tr> <tr> <td style="text-align: center;">Yes</td> <td style="text-align: center;">No</td> </tr> <tr> <td style="text-align: center;"> </td> <td></td> </tr> <tr> <td style="text-align: center;"> </td> <td></td> </tr> <tr> <td style="text-align: center;"> </td> <td></td> </tr> </table>		<u>Check one box</u>	Yes	No						
	<u>Check one box</u>										
Yes	No										

\_\_\_ I hereby appeal this decision.

Grievant's signature	Date
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## REQUEST FOR HEARING

### STEP 5 – DECISION TO BE PRESENTED TO GRIEVANT

Name of grievant	Date grievance filed
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(Check one)

I hereby petition the attached grievance be submitted to an advisory fact-finding hearing.

\_\_\_\_\_ Panel Designee

I hereby waive my right to an advisory fact-finding hearing and petition that the following grievance be submitted to the board.

Grievant's signature	Representative's signature
Date	Date

**FORMS FOR PART III  
OF THE PROCEDURE FOR  
ADJUSTING GRIEVANCES**

FORMS FOR PROPOSED DISMISSAL/PROBATION

*Enclosed herein are the necessary forms for proposed dismissal/probation proceeding as prescribed in Part III of the procedure enacted by the State Board of Education.*

*VIRGINIA BOARD OF EDUCATION*

**NOTIFICATION: NOTICE OF PROPOSED DISMISSAL OR PROPOSED PLACING ON PROBATION**

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name of teacher

\_\_\_\_\_  
School/department of assignment

(Check one)

\_\_\_ The Division Superintendent will recommend to the School Board that you be placed on probation for the period:

\_\_\_\_\_ to \_\_\_\_\_  
(date) (date)

At your request Reasons for this recommendation will be provided to you in writing or ~~at your request~~ in a personal interview ~~within three (3) days of your request~~.

\_\_\_ The Division Superintendent will recommend to the School Board that you be dismissed from your position as:

\_\_\_\_\_  
(position)

At your request Reasons for this recommendation will be provided to you in writing or ~~at your request~~ in a personal interview ~~within three (3) days of your request~~.

You have 15 days from receipt of this form to request, in writing, a hearing before the School Board or an advisory fact-finding panel as provided in the procedure. Please advise me as soon as possible whether you wish to have such a hearing (see attached form). Enclosed, for your information, is a copy of the procedure.

\_\_\_\_\_  
Signature of Superintendent

## REQUEST FOR HEARING

TO BE SUBMITTED TO SUPERINTENDENT

Name of teacher	Superintendent's proposed action  <input type="checkbox"/> Dismissal  <input type="checkbox"/> Probation
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(Check one)

I hereby request that I be afforded an advisory fact-finding hearing on the above referenced matter.

\_\_\_\_\_ Panel Designee

I hereby waive my right to an advisory fact-finding hearing and request that I be afforded a hearing before the School Board on the above referenced matter.

Teacher's signature	Representative's signature
Date	Date