



Proposed Regulation Agency Background Document

Agency name	Virginia Board of Education
Virginia Administrative Code (VAC) citation	<u>8 VAC 20-90-10 et seq.</u>
Regulation title	<i>Procedure for Adjusting Grievances</i>
Action title	Revise the <i>Procedure for Adjusting Grievances</i>
Date this document prepared	December 12, 2013/Revised June 4, 2014

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

In a short paragraph, please summarize all substantive provisions of new regulations or changes to existing regulations that are being proposed in this regulatory action.

The *Procedure for Adjusting Grievances* provides (1) an orderly procedure for resolving disputes concerning the application, interpretation, or violation of any of the provisions of local school board policies, rules and regulations as they affect the work of teachers, other than dismissals or probation and (2) an orderly procedure for the expeditious resolution of disputes involving the dismissal any teacher.

The regulations, *Procedure for Adjusting Grievances*, were last amended effective May 2, 2005. In addition to technical edits, the proposed amendments include the following provisions to comport with the 2013 General Assembly legislation:

- Changes the grievance procedure for teachers by giving local school boards the option to assign a grievance hearing to be heard by an impartial hearing officer designated by the local school board;
- Removes the option for a grievance to be heard before a fact-finding panel;
- Removes “placing on probation” from the definition of a Grievance;
- Revises the Board of Education forms prescribed by the *Code of Virginia*.

On June 27, 2013, the Board of Education approved the Notice of Intended Regulatory Action (NOIRA), which is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the

Virginia Administrative Process Act (APA) and Executive Order 14 (2010). The NOIRA was filed with the *Virginia Registrar*, and the public comment period for the NOIRA concluded on September 25, 2013.

Acronyms and Definitions

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.

N/A

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable and (2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person's overall regulatory authority.

The *Constitution of Virginia* grants the Board of Education authority for the general supervision of the public school system, and Section 22.1-16 of the *Code of Virginia* authorizes the Board to promulgate such regulations as may be necessary to carry out its powers and duties and the provisions of this title.

Constitution of Virginia ([Article VIII, Section 4](#)): "The general supervision of the public school system shall be vested in a Board of Education...."

Code of Virginia, Section [22.1-16](#). Bylaws and regulations generally.

The Board of Education may adopt bylaws for its own government and promulgate such regulations as may be necessary to carry out its powers and duties and the provisions of this title.

Code of Virginia

§§ [2.2-507](#), [22.1-79](#), [22.1-253.13:5](#), [22.1-293](#), [22.1-294](#), [22.1-295](#), [22.1-298.1](#), [22.1-299](#), [22.1-302](#), [22.1-303](#), [22.1-304](#), [22.1-305](#), [22.1-305.1](#), [22.1-306](#), [22.1-307](#), [22.1-308](#), [22.1-309](#), [22.1-311](#), [22.1-313](#), and [22.1-314](#) of the *Code of Virginia* [Reference: Senate Bill [2151](#) bill is identical to [1223](#).]

Note: The 2014 General Assembly passed Senate Bill 43 which extended the time in which a teacher who received a Notice of Dismissal to request a hearing has increased from five days to 10 days after receiving the Notice. This new change to the *Code of Virginia* will become effective July 1, 2014, and notations of the revisions to the proposed 8 VAC 20-90-70(A)(1) and 8 VAC 20-90-70(A)(2) have been made.

Purpose

Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal, the environmental benefits, and the problems the proposal is intended to solve.

The *Procedure for Adjusting Grievances* is essential to protect the health, safety, or welfare of citizens as the regulations provide (1) an orderly procedure for resolving disputes concerning the application, interpretation, or violation of any of the provisions of local school board policies, rules and regulations as they affect the work of teachers, other than dismissals or probation and (2) an orderly procedure for the expeditious resolution of disputes involving the dismissal of any teacher.

Substance

Please briefly identify and explain new substantive provisions (for new regulations), substantive changes to existing sections or both where appropriate. (More detail about all provisions or changes is requested in the "Detail of changes" section.)

The Virginia Board of Education regulations, *Procedure for Adjusting Grievances*, were last amended effective May 2, 2005. The 2013 General Assembly approved legislation resulting in the need to make revisions to the regulations. Other than changing the *Procedure for Adjusting Grievances* to comport with the 2013 legislation, no additional substantive revisions were made. The major revisions to the regulations are as follows:

- Changes the grievance procedure for teachers by giving local school boards the option to assign a grievance hearing to be heard by an impartial hearing officer designated by the local school board;
- Removes the option for a grievance to be heard before a fact-finding panel;
- Removes “placing on probation” from the definition of a Grievance;
- Revises the Board of Education forms prescribed by the *Code of Virginia*.

The 2014 General Assembly passed Senate Bill 43 which extended the time in which a teacher who received a Notice of Dismissal to request a hearing has increased from five days to 10 days after receiving the Notice. This new change to the *Code of Virginia* will become effective July 1, 2014, and notations of the revisions to the proposed 8 VAC 20-90-70(A)(1) and 8 VAC 20-90-70(A)(2) have been made.

Issues

Please identify the issues associated with the proposed regulatory action, including:
 1) *the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
 2) *the primary advantages and disadvantages to the agency or the Commonwealth; and*
 3) *other pertinent matters of interest to the regulated community, government officials, and the public.*

If the regulatory action poses no disadvantages to the public or the Commonwealth, please indicate.

The regulations do not pose any major disadvantages to the public or the Commonwealth.

Requirements more restrictive than federal

Please identify and describe any requirements of the proposal, which are more restrictive than applicable federal requirements. Include a rationale for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

There are no applicable federal requirements related to this regulatory revision.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

There are no localities particularly affected by the proposed regulation.

Public participation

Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal and the impacts of the regulated community.

In addition to any other comments, the board/agency is seeking comments on the costs and benefits of the proposal and the potential impacts of this regulatory proposal. Also, the agency/board is seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the *Code of Virginia*. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments may do so via the Regulatory Town Hall website (<http://www.townhall.virginia.gov>), or by mail, email or fax to Mrs. Patty S. Pitts, assistant superintendent for teacher education and licensure, P. O. Box 2120, Richmond, VA 23218-2120; Phone: (804) 371-2522; Fax: (804) 530-4510; E-mail: Patty.Pitts@doe.virginia.gov. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by midnight on the last date of the public comment period.

A public hearing will be held after this regulatory stage is published in the *Virginia Register of Regulations*, and notice of the hearing will be posted on the Virginia Regulatory Town Hall website (<http://www.townhall.virginia.gov>) and on the Commonwealth Calendar website (<http://www.virginia.gov/cmsportal3/cgi-bin/calendar.cgi>). Both oral and written comments may be submitted at that time.

Economic impact

Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirement creates the anticipated economic impact. Please keep in mind that we are looking at the impact of the proposed changes to the status quo.

<p>Description of the individuals, businesses or other entities likely to be affected (positively or negatively) by this regulatory proposal. Think broadly, e.g., these entities may or may not be regulated by this board</p>	<p>The regulations are currently required. Costs of implementation will primarily be human resources to revise regulations and inform school divisions and educators of revisions.</p>
<p>Agency’s best estimate of the number of (1) entities that will be affected, including (2) small businesses affected. Small business means a business, including affiliates, that is independently owned and operated, employs fewer than 500 full-time employees, or has gross annual sales of less than \$6 million.</p>	<p>Processes will need to be revised to conform to the <i>Code of Virginia</i> and the regulations. No additional substantial costs exist for localities.</p>
<p>Benefits expected as a result of this regulatory proposal.</p>	<ul style="list-style-type: none"> ■ Changes the grievance procedure for teachers by giving local school boards the option to assign a grievance hearing to be heard by an impartial hearing officer designated by the local school board; ■ Removes the option for a grievance to be heard before a fact-finding panel; ■ Removes “placing on probation” from the definition of a Grievance; ■ Revises the Board of Education forms prescribed by the <i>Code of Virginia</i>.
<p>Projected cost to the <u>state</u> to implement and enforce this regulatory proposal.</p>	<p>Virginia school divisions: 132</p>
<p>Projected cost to <u>localities</u> to implement and enforce this regulatory proposal.</p>	<p>Teachers and other school employees as specified; Virginia school divisions: 132</p>
<p>All projected costs of this regulatory proposal for affected individuals, businesses, or other entities. Please be specific and include all costs, including projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses, and costs related to real estate development.</p>	<p>The projected costs will include the human resources to revise the regulations and change procedures in local school divisions.</p>

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in §2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.

Amendments in the *Code of Virginia* require revisions in the regulations. No additional alternatives have been considered.

Regulatory flexibility analysis

Pursuant to §2.2-4007.1B of the Code of Virginia, please describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

Because revisions are required by the *Code of Virginia* and the regulations must align to the *Code*, no other alternative regulatory methods were applicable.

Public comment

Please summarize all comments received during the public comment period following the publication of the NOIRA, and provide the agency response.

Committer	Comment	Agency response
William B. Reichhardt, Esq.	<p>Procedures for Teacher Dismissal Actions and Grievances</p> <p>Recent changes in the Virginia Code regarding procedures for the dismissal of teachers create significant substantive and procedural concerns for both the school district and counsel representing teachers in these matters. As General Counsel for the Fairfax County Federation of Teachers (FCFT) and an attorney who has represented teachers and administrators for over 20 years in personnel actions, I am offering these comments to highlight issues created by the new legislation and perhaps unanticipated by the drafters. Appropriate Regulations should be drafted to address these issues.</p> <p>1. The removal of "probation" as a resolution alternative in the context of the dismissal action.</p> <p>The removal of a probationary alternative in a dismissal action under Va. Code 22.1-307 raises the question as to whether or not a</p>	<p>The comments focus primarily on the revisions in the <i>Code of Virginia</i> passed by the 2013 General Assembly. The agency does not have authority to change the statutory requirements.</p>

Commenter	Comment	Agency response
	<p>school board now has any jurisdiction to employ this option in the settlement of a dismissal case. In many cases where the school has given notice of dismissal to a teacher, both the teacher and the school district have resolved these matters to their mutual satisfaction through settlement agreements, resignation agreements and other forms of dispute resolution. When it is fair and equitable to resolve the case short of dismissal, the elements of a resolution agreement often include a specific sanction (for example, suspension of time and/or pay) and a rehabilitative process often described as a "probationary" period. Flexibility to fashion such remedies are impaired by deletion of probation in 22.1-307 and 22.1-313(A).</p> <p>2. Determination of "incompetency."</p> <p>The term "incompetency" may now be construed as "<i>one</i> or more unsatisfactory performance evaluation(s)" under Va. Code 22.1-307 (B). In cases where the school district moves for dismissal alleging incompetence for a single unsatisfactory performance evaluation, particular care should be taken to ensure that the evaluation was objective, fair, and not subject to unprofessional or extraneous administrative influence. In a dismissal action for incompetency for a single unsatisfactory performance evaluation, the division superintendent should be required to show a pattern of poor performance, failure to respond to rehabilitative effort or other documented factors in addition to the single performance evaluation.</p> <p>3. Notice of a dismissal recommendation.</p> <p>Va. Code 22.1-309 provides for written notice of the dismissal recommendation to a teacher and informing him that within <i>five (5)</i> business days after receiving the notice, the teacher may request a hearing before the school board. The reduction from <i>fifteen (15)</i> business days to <i>five (5)</i>, will create an extraordinary burden on teachers to quickly (I predict in all, if not most, cases) give notice for a hearing because there is insufficient time to seek comprehensive advice and guidance</p>	

Commenter	Comment	Agency response
	<p>regarding other options. By the time a teacher in such a position has the opportunity to seek guidance from a union representative, an attorney, or even family members, they run the risk of missing a statutory deadline to preserve their fundamental due process right to a hearing. The net result is that most teachers will immediately give notice for a hearing, thus starting a statutory timeline for exchange of information (discovery), setting up a hearing, possible identification of the hearing officer, all of which is time-consuming for teachers and administrative personnel. This will make reasonable settlement-negotiations much more difficult.</p> <p>4. Unreasonable and Burdensome Discovery Deadlines.</p> <p>Va. Code 22.1-309 mandates that upon the teacher's request for a hearing pursuant to Section 22.1-311, the division superintendent shall provide <i>within 10 days</i> the opportunity to inspect and copy the teacher's personnel file and "all other documents relied upon reaching the decision to recommend dismissal." In dismissal cases discoverable documents often extend beyond a teacher's personnel file. They may include, but not be limited to, the principal's notes from meetings with the teacher, so-called "school based" files, and unsolicited writings from parents to school officials regarding the teacher (regardless of any informal promise of confidentiality between the parent and the receiving administrator). The mandatory 10-day limitation for delivery of all of this information for inspection and copying is predictably burdensome on school administration.</p> <p>To magnify the potential discovery problems, the Code now provides that the teacher shall provide the division superintendent with the opportunity to inspect and copy any documents to be offered in rebuttal to the recommended dismissal. In most cases, the teacher is not able to identify all documents until there has been a full disclosure of documents from the division superintendent. However, if the division superintendent makes an immediate (or simultaneous) document request as does the teacher, they are both working within the same 10-day period. It is suggested that these periods be staggered to some degree, even though there is a</p>	

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	<p>continuing obligation to produce information. All exchanges of documents should be completed and certified as complete at least five business days prior to a hearing.</p> <p>5. Scheduling of the hearing relative to discovery deadlines.</p> <p>Va. Code 22.1-311 requires the school board (or a hearing officer appointed by the school board) to set a hearing within 15 days of the request made by the teacher. Any regulations should clarify whether this is a deadline to schedule a hearing or to actually commence the hearing. Further, the teacher is to be given at least a five-day written notice of the time and place of the hearing. This short timeframe will predictably conflict with the 10-day time-limitations for discovery mandated by Section 22.1-309. The net result will be substantial time devoted by both parties to meet these deadlines. This will jeopardize opportunities to resolve a dismissal case through a negotiated agreement. The short time frames will increase the number of contested hearings and the costs associated for both sides.</p> <p>Regulations should provide for flexibility in the scheduling and commencement of hearings. It is also suggested that the regulations require the development of a prehearing memorandum which defines procedures for the conduct of the hearings, deadlines for discovery exchanges and rulings for any preliminary matters such as availability of witnesses, ability of witnesses to testify by telephone etc.</p>	
<p>Steven L. Greenburg</p> <p>President, Fairfax County Federation of Teachers</p>	<p>Procedures for Teacher Dismissal Actions and Grievances</p> <p>As the president of the largest AFT local in Virginia, representing over 3,500 teachers, I am providing public comment on Va. Code 22.1-307 through 22.1-313 due to important concerns that we have with the changes offered to the Virginia Code.</p> <p>Changes in the Virginia Code regarding procedures for the dismissal of teachers create significant substantive and procedural problems for both the school district and counsel representing teachers in these</p>	<p>The comments focus primarily on the revisions in the <i>Code of Virginia</i> passed by the 2013 General Assembly. The agency does not have authority to change the statutory requirements.</p>

Commenter	Comment	Agency response
	<p>matters.</p> <p>Specifically, the following Regulations should be drafted more carefully to address the following issues*:</p> <ol style="list-style-type: none"> 1. The removal of "probation" as a resolution alternative in the context of the dismissal action. 2. Determination of "incompetency." 3. Notice of a dismissal recommendation. 4. Unreasonable and Burdensome Discovery Deadlines. 5. Scheduling of the hearing relative to Discovery Deadlines. <p>Without additional consideration given to the proposed Code language- adjustments, the by-product of these regulation changes may result in increased litigation and time/ resource drains on both the school system and teacher. Reasonable Discovery deadlines and careful, accurate wording of the Code (in regards to both "probation" and "incompetence") are critical in achieving a reasonable and efficient procedure that is fairer to both the school district and teacher.</p> <p><i>* Please see 'Public comment' posted by General Counsel for the Fairfax County Federation of Teachers William B. Reichhardt, Esq., dated September 19, 2013 for a detailed description of each issue (#1-5) designated in this section.</i></p>	
<p>William B. Hosp, Jr., President of Prince William Federation of Teachers</p>	<p>Due Process and Fairness</p> <p>I share the concerns expressed by our colleagues from the Fairfax Federation of Teachers. Since they have done such a meticulous job of explaining our concerns, I will simply add that the Commonwealth should always strive to clean up mistakes in drafting legislation and such changes should be considered as "housekeeping."</p>	<p>The comments focus primarily on the revisions in the <i>Code of Virginia</i> passed by the 2013 General Assembly. The agency does not have authority to change the statutory requirements.</p>
<p>Doris Crouse-Mays Virginia AFL-CIO</p>	<p>Revise the Procedure for Adjusting Grievances</p> <p>As President of the Virginia AFL-CIO, which represents over 150,000 union members and retirees, I want to echo the concerns of the Presidents of the Prince William and Fairfax Federation of Teachers.</p>	<p>The comments focus primarily on the revisions in the <i>Code of Virginia</i> passed by the 2013 General Assembly. The agency does not have authority to change the statutory requirements.</p>

Commenter	Comment	Agency response
	<p>Attracting and retaining skilled teachers has an enormous impact on students and the quality of their education. It's critical that Virginia has a dismissal and grievance process that is fair and protects educators from arbitrary dismissals fueled by nepotism or personal conflicts. It is my hope that the regulatory issues spelled out by William B. Reichhardt, Esq. are taken into consideration and addressed.</p>	
<p>Tracey Bailey State Director of Virginia Professional Educators</p>	<p>Procedures for Teacher Dismissal and Grievances</p> <p>Virginia Professional Educators is the Commonwealth's largest independent non-union teacher association. As such, we help classroom teachers in a multitude of ways. We help them improve their academic performance, we teach them to better manage student problems and disruptions, and we guide them through many employment problems. Sometimes this involves counseling a teacher who has received a poor evaluation or who has been recommended for dismissal.</p> <p>When such unfortunate events happen, it is of the utmost importance that a teacher be given time to understand the recommendation that is being made about them, and that they be presented immediately with the evidence that supports that recommendation. Only then can they make an informed decision about what is happening to them and how to proceed. Yet the changes in timelines and deadlines in this new legislation seem counter-productive to that process, and likely to result in many more contested hearings and far fewer collegial agreements, solutions, or voluntary resignations.</p> <p>It seems that teachers may be forced to make some decisions about how to respond, before even having seen all the evidence against them.</p> <p>Furthermore, it is not uncommon that a teacher only finds out that there is a significant problem with his or her performance when they are handed their performance evaluation. But another change in the law (22.1-307 B) defines incompetency (i.e., grounds for dismissal) as simply "<u>one</u> or more unsatisfactory performance</p>	<p>The comments focus primarily on the revisions in the <i>Code of Virginia</i> passed by the 2013 General Assembly. The agency does not have authority to change the statutory requirements.</p>

Commenter	Comment	Agency response
	<p>evaluations.” So a situation is created in which a teacher could receive their first notice of unsatisfactory performance in an evaluation on one day, and then receive a termination notice on the next.</p> <p>In such an expedited, seemingly rushed process, it is essential for both parties to have as much opportunity as possible for collecting documents, for full disclosure, and for consideration of non-confrontational options. This is in the best interest of both the School Board administrative staff <i>and</i> the classroom teacher.</p> <p>For these reasons, VPE agrees with the recommendations and concerns expressed by Mr. William B. Reichhardt, counsel for the AFT. His public comments were submitted on 9/23/13. In those comments, Mr. Reichhardt offers several specific suggestions and observations that should be given due consideration.</p> <p>Thank you for your time, for your public service, and for your consideration of these concerns.</p>	

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one’s spouse, and one’s children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

The proposed regulations address the procedures for adjusting grievances, ensuring an orderly procedure for resolving disputes.

Detail of changes

Please list all changes that are being proposed and the consequences of the proposed changes. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory action.

If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all differences between the pre-emergency regulation and this proposed regulation, and (2) only changes made since the publication of the emergency regulation.

Section	Proposed requirements	Other Regulations and law that apply	Intent and likely impact of proposed requirements
<p>8VAC20-90-10. Definitions</p>	<p>Part I Definitions 8VAC20-90-10. Definitions. The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise. "Business day" means, in accordance with § 22.1-312 of the Code of Virginia, any day that the relevant school board office is open. "Days" means calendar days unless a different meaning is clearly expressed in this procedure. Whenever the last day for performing an act required by this procedure falls any period of time fixed by this procedure shall expire on a Saturday, Sunday, or legal holiday, the act may be performed on the period of time for taking action under this procedure shall be extended to the next day if that 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 (8VAC20-90-20 et seq.), a complaint or a dispute by a teacher relating to his employment, including, but not necessarily limited to, the application or interpretation of personnel policies, rules and regulations, ordinances, and statutes; acts of reprisal <u>against a teacher for filing or processing a grievance, or participating as a witness in any step, meeting or hearing related to a grievance; as a result complaints</u> of discrimination on the basis of race, color, creed, political affiliation, handicap, age, national origin, or sex. "Grievance" means, for the purposes of Part III (8VAC20-90-60 et seq.), a complaint or a dispute involving a teacher relating to his 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; or discharge, layoff, or suspension from duties because of decrease in enrollment, decrease in a particular subject, enrollment or abolition of a particular subject, <u>or</u> 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; <u>or coaching or extracurricular activity sponsorship.</u> 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. "Hearing officer" means <u>an impartial hearing officer from outside the school division who possesses some knowledge and expertise in public education and education law and who is capable of presiding over an administrative hearing.</u> "Personnel file" means, for the purposes of Part III (8VAC20-90-60 et seq.), any and all memoranda, entries or other</p>		<p>Revisions were made to conform to changes in the <i>Code of Virginia</i> (2013 General Assembly); Forms in the appendices of the document also were revised to comport with the revisions.</p> <p>The 2014 General Assembly passed Senate Bill 43 which extended the time in which a teacher who received a Notice of Dismissal to request a hearing has increased from five days to 10 days after receiving the Notice. This new change to the <i>Code of Virginia</i> will become effective July 1, 2014, and notations of the revisions to the proposed 8 VAC 20-90-70(A)(1) and 8 VAC 20-90-70(A)(2) have been made.</p>

Section	Proposed requirements	Other Regulations and law that apply	Intent and likely impact of proposed requirements
<p>8VAC20-90-20. Purpose of Part II of this grievance procedure</p>	<p>documents included in the teacher's file as maintained in the central school administration office or in any file regarding the teacher maintained within a school in which the teacher serves.</p> <p>"Probation" means a period not to exceed one year during which time it shall be the duty of the teacher to remedy those deficiencies which give rise to the probationary status.</p> <p>"Teacher" or "teachers" means, for the purposes of Part II (8VAC20-90-20 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 purposes of Part III (8VAC20-90-60 et seq.), all regularly <u>certified licensed professional public school personnel employed by any school division</u> under a written contract as provided by § 22.1-302 of the <i>Code of Virginia</i>, by any school division as a teacher or <u>as an assistant principal, principal, or supervisor as provided by § 22.1-294 of the Code of Virginia of classroom teachers but excluding all superintendents.</u></p> <p>"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 <u>to the grievant or office of the proper school board representative.</u></p> <p>"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 clause (i), (ii), or (iii) above; provided that the authority to act as set forth in clause (i), (ii), (iii), or (iv) requires the exercise of independent judgment and is not merely routine and clerical in nature.</p> <p>"Written grievance appeal" means a written or typed statement describing the event or action complained of, or the date of the event or action <u>complained of</u>, and a concise description of those policies, procedures <u>rules</u>, regulations, ordinances or statutes upon which the teacher bases his claim. The grievant shall specify what he expects to obtain through use of the grievance procedure. A statement <u>written grievance appeal</u> shall be written upon forms prescribed by the Board of Education and supplied by the local school board.</p> <p>Part II Grievance Procedure</p> <p>8VAC20-90-20. Purpose of Part II of this grievance procedure.</p> <p>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, rules and regulations as they affect the work of teachers, other than dismissals 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</p>		

Section	Proposed requirements	Other Regulations and law that apply	Intent and likely impact of proposed requirements
<p>8VAC20-90-30. Grievance procedure.</p>	<p>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.</p> <p>8VAC20-90-30. Grievance procedure.</p> <p>Recognizing that grievances should be begun<u>begin</u> and should be settled promptly, a grievance must be initiated within 15 business days following either the event giving rise to the grievance, or within 15 business days following the time when the employee knew or reasonably should have known of its occurrence. Grievances shall be processed as follows:</p> <ol style="list-style-type: none"> 1. Step 1 -- Informal. The first step shall be an informal conference between the teacher and his 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. 2. 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 grievance by filing said grievance in writing<u>a written grievance appeal on the required form</u> within 15 business days following the event giving rise to the grievance, or within 15 business 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 <u>appeal</u> is not, without just cause, filed within the specified time, the grievance will be barred. <p>A meeting shall be held between the principal (or his designee or both) and the teacher (or his designee or both) within five business days of the receipt by the principal of the written grievance. At such meeting the teacher or other party involved, or both, shall be entitled to present appropriate witnesses and to be accompanied by a representative other than an attorney. The principal (or his designee or both) shall respond in writing within five business days following such meeting.</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 thereto within 10 business days, and the meeting must then be held within five business days thereafter.</p> <ol style="list-style-type: none"> 3. 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 <u>written</u> grievance appeal form within five 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 designee or both) and the teacher (or his designee or both) at a mutually agreeable time within five business days. <u>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. The teacher shall file an answer to such request within 10 business days, and the meeting</u> 		

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	<p>shall be held within five business days of the date on which the answer was received. 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 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 designee) shall respond in writing within five 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 business days, and the meeting shall be held within five 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 54.</p> <p>4. 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 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 upon the grievant within 15 business days after the answer provided by Step 3.</p> <p>a. Panel. Within five 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 business days of their selection select a third impartial panel member.</p> <p>b. Selection of impartial third member. In the event that both panel members are unable to agree upon a third panel member within five 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</p>		

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	<p>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 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 have the authority to conduct the hearing and make recommendations as set forth herein while acting as a hearing officer. The Attorney General shall represent personally or through one of his assistants any third impartial panel member who shall be made a defendant in any civil action arising out of any matter connected with his duties as a panel member. If, in the opinion of the Attorney General, it is impracticable or uneconomical for such legal representation to be rendered by him or one of his assistants, he may employ special counsel for this purpose, whose compensation shall be fixed by the Attorney General and be paid out of the funds appropriated for the administration of the Department of Education.</p> <p>c. Holding of hearing. The hearing shall be held by the panel within 30 business 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.</p> <p>d. Procedure for fact finding panel.</p> <p>(1) 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.</p> <p>(2) The panel may ask, at the beginning of the hearing, for statements from the division superintendent and the teacher clarifying the issues involved.</p> <p>(3) The parties shall then present their claims and evidence. Witnesses may be questioned by the panel members, the teacher and the division superintendent. The panel may, at its discretion, vary this procedure, but shall afford full and equal opportunity to all parties to present any material or relevant evidence and shall afford the parties the right of cross-</p>		

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	<p>examination.</p> <p>(4) 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 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>(5) Exhibits offered by the teacher of 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.</p> <p>(6) The facts found and recommendations made by the panel shall be arrived at by a majority vote of the panel members.</p> <p>(7) The hearing may be reopened by the panel, on its own motion or upon application of the teacher or the division superintendent, for good cause shown, to hear after discovered evidence at any time before the panel's report is made.</p> <p>(8) 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 business days after the completion of the hearing.</p> <p>(9) 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 equally the cost of the recording. 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.</p> <p>(10) 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.</p> <p>e. Expenses:</p> <p>(1) The teacher shall bear his 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>		

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	<p>(2) 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 normal business hours if he receives his normal salary for the period of such service.</p> <p>(3) 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.</p> <p>f. 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 subdivision 5 c of this section. The school board shall have the right to require a further hearing in any grievance proceeding as provided in subdivision 5 c of this section.</p> <p>54. Step 54 -- Decision by the school board.</p> <p>a. If a teacher elects to <u>request a decision by proceed directly to a determination before the school board as provided for in Step 53</u>, he must notify the superintendent in writing of the intention to <u>make the request of appeal directly to the board, of the grievance alleged, and the relief sought</u> within five business days after receipt of the answer as required in Step 3 or the due date thereof. Upon receipt of such notice, <u>the board may hold a hearing on the grievance, may elect to have the hearing conducted by a hearing officer appointed by the school board consistent with the procedures in § 22.1-311 of the Code of Virginia, or may make its determination on the basis of the written evidence presented by the teacher and the recommendation of the superintendent.</u></p> <p>b. <u>In any case in which the school board elects to hold a hearing or elects to have a hearing officer conduct the hearing, the hearing shall be set within 30 days of the school board's receipt of the notice required by Step 4a above, and the teacher must be given at least 15 days' written notice of date, time and place of the hearing.</u> 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 business days of the deadline for the teacher's request for a determination by the school board.</p> <p>b. <u>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 subdivision 5c of this section. The decision of the school board shall be reached after considering the transcript, if any; the findings of</u></p>		

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	<p>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.</p> <p>c. 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>(1) 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.</p> <p>(2) 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.</p> <p>(3) 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.</p> <p>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 <u>or the hearing officer, as the case may be,</u> shall establish the rules for the conduct of <u>any</u> the 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 <u>or the hearing officer</u>. <u>In the case of a hearing conducted by the school board,</u> the school board's attorney, assistants, or representative, if he, or they, represented a participant in the prior proceedings, the grievant, the grievant's attorney, or representative and, notwithstanding the provisions of § 22.1-69 of the <i>Code of Virginia</i>, the superintendent shall be excluded from any executive session of the school board which has as its</p>		

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	<p>purpose reaching a decision on the 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 <u>hearing</u> 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, and 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 to the 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.</p> <p><u>c. In the event of a hearing conducted by a hearing officer, the recommendation of the hearing officer shall be based exclusively upon the evidence presented at the hearing. The hearing may be reopened for the purpose of hearing after-discovered evidence upon a finding of good cause by the hearing officer at any time before the hearing officer's recommendation is due upon his own motion or upon application by either party to the grievance. The hearing officer shall transmit his written recommendation and a record or recording of the hearing to the school board as soon as practicable and no more than 10 business days after the hearing.</u></p> <p><u>d. In the event of a hearing by a hearing officer, the school board may make its decision upon the record or recording of such hearing or the school board may elect to conduct a further hearing to receive additional evidence. The school board must hold such further hearing as soon as practicable and must give written notice of the time and place of such further hearing to the division superintendent and the teacher within 10 business days after the board received the record or recording of the initial hearing. The notice must specify each matter to be inquired into by the school board. The school board shall determine the procedure to be followed at such further hearing.</u></p> <p><u>e. In the event of a hearing before the school board, the school board shall give the teacher its written decision as soon as practicable and no more than 30 days after the hearing. The decision of the school board shall be reached after considering the</u></p>		

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<p>8VAC20-90-40. Grievability.</p>	<p><u>evidence and information presented at the school board hearing.</u></p> <p><u>f. In the event of a hearing before a hearing officer followed by a further hearing by the school board, the school board shall give the teacher its written decision as soon as practicable and no more than 30 days after such further hearing. The decision of the school board shall be reached after considering the record or recording of the initial hearing, the recommendations of the hearing officer, and the evidence and information presented at the further hearing before the school board.</u></p> <p><u>g. In the event of a hearing before a hearing officer in cases in which no further hearing is conducted by the school board, the school board shall give the teacher its written decision as soon as practicable and no more than 30 days after receiving the record or recording of the hearing. The decision of the school board shall be reached after considering the record or recording of the hearing and the recommendations of the hearing officer.</u></p> <p>-(4) 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 procedure 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.</p> <p>d. 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.</p> <p><u>eh. The school board shall retain its exclusive final authority over matters concerning employment and the supervision of its personnel.</u></p> <p>8VAC20-90-40. Grievability.</p> <p>A. Initial determination of grievability. Decisions regarding whether or not a matter is grievable shall be made by the school board at the request of the division superintendent <u>administration</u> or grievant <u>and such decision shall be made within 10 business days of such request.</u> The school board shall reach its decision only after allowing the division superintendent <u>administration</u> 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 at 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 by the board or a hearing officer or the right to such determination shall be deemed to have been waived.</p>		

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	<p>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.</p> <p>B. Appeal of determination on grievability.</p> <p>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.</p> <p>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.</p> <p>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 may, on motion of the grievant, issue a writ of certiorari requiring the school board to transmit the records on or before a certain date.</p> <p>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 may, in its discretion, receive such other evidence as the ends of justice require.</p> <p>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 15 days from the date of the conclusion of the court's hearing.</p> <p>8VAC20-90-50. Time limitations.</p> <p>A. 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.</p> <p>B. 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.</p> <p>C. 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 option, to advance to the next step in the procedure or, at the final step, to a decision in his favor.</p> <p>D. 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</p>		

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<p>8VAC20-90-60. Dispute resolution.</p> <p>8VAC20-90-70. Procedure for dismissals</p>	<p>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.</p> <p>Part III Procedure for Dismissals or Placing on Probation 8VAC20-90-60. 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 (§ 22.1-306 et seq.) Chapter 15 of Title 22.1 of the <i>Code of Virginia</i> and the Standards of Quality for school divisions, Chapter 13.1 (§ 22.1-253.13:1 et seq.) of Title 22.1 of the <i>Code of Virginia</i>, is to provide an orderly procedure for the expeditious resolution of disputes involving the dismissal or placing on probation of any teacher.</p> <p>8VAC20-90-70. Procedure for dismissals or placing on probation. A. Notice to teacher of recommendation for dismissal or placing on probation.</p> <ol style="list-style-type: none"> 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 of the proposed dismissal, or placing on probation, and informing the teacher that within <u>45 five ten business</u> 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, or, at the option of the school board, a hearing officer appointed by the school board, as provided in § 22.1-311 of the <i>Code of Virginia</i>. 2. During such <u>45 fiveten-business-day</u> 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 of the <i>Code of Virginia</i>, 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 that may be used in the respective parties' cases-in-chief. The cost of copying 		

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	<p>such documents shall be paid by the requesting party.</p> <p>B4. Upon a timely request for a hearing, the school board or, at the school board's option, a hearing officer appointed by the school board shall set a hearing within 15 days of the request and the teacher shall be given at least five days' written notice of the time and the place of the hearing. Fact-finding panel. Within 15 days after the teacher receives the notice referred to in subdivision A 1 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.</p> <p>1. Panel. Within five 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 business days of their selection select a third impartial panel member.</p> <p>2. Selection of impartial third member. In the event that both panel members are unable to agree upon a third panel member within five 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 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.</p> <p>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</p>		

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	<p>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.</p> <p>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.</p> <p>B. 4.. Procedure for fact-finding panel hearing.</p> <p>1. The hearing shall be conducted by the school board or, at the school board's option, a hearing officer appointed by the school board. The teacher and the division superintendent may be represented by legal counsel or other representatives. The hearing shall be private, unless the teacher requests a public hearing. The school board or hearing officer, as the case may be, shall establish the rules for the conduct of the hearing, and 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 or hearing officer.</p> <p>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.</p> <p>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.</p> <p>c. The parties shall then present their claims and evidence. Witnesses may be questioned by the panel members, the teacher and the division superintendent. 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>2.d. The parties shall produce such additional evidence as the panelschool board or hearing officer may deem necessary to an understanding and determination of the dispute. The panelschool board or hearing officer shall be the judge of determine the relevancy and materiality of the evidence offered. All evidence shall be taken in the presence of the panelschool board or hearing officer and of the parties.</p> <p>3.e. Exhibits offered by the teacher or the division superintendent may be received in evidence by the panel school board or hearing officer and, when so received, shall be marked and made a part of the record.</p>		

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	<p>f. The facts found and recommendations made by the panel shall be arrived at by a majority vote of the panel members.</p> <p><u>4. A stenographic record or tape recording of the proceedings shall be taken. The two parties shall share the cost of the recording equally. The record or recording of the proceedings shall be preserved for a period of six months. If 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 transcription.</u></p> <p><u>5. Expenses. The teacher shall bear his own expenses. The school board shall bear the expenses of the division superintendent. The expenses of the hearing officer shall be borne by the school board.</u></p> <p><u>6. 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.</u></p> <p><u>7. In the event of a hearing conducted by a hearing officer, g. The recommendations and findings of fact of the panel hearing officer 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. h. The hearing may be reopened by the panel hearing officer at any time before the panel's report is made hearing officer's recommendation is due upon his its own motion or upon application of the teacher or the division superintendent for good cause shown to hear after-discovered evidence.</u></p> <p>i. 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. <u>hearing officer shall transmit his written recommendation and a record or recording of the hearing to the school board as soon as practicable and no more than 10 business days after the hearing.</u></p> <p><u>8. In the event of a hearing by a hearing officer, the school board may make its decision upon the record or recording of such hearing or the school board may elect to conduct a further hearing to receive additional evidence. The school board must hold such further hearing as soon as practicable and must give written notice of the time and place of such further hearing to the division superintendent and the teacher within 10 business days after the board received the record or recording of the initial hearing. The notice must specify each matter to be inquired into by the school board. The school board shall determine the procedure to be followed at such further hearing.</u></p> <p>j. 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</p>		

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	<p>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.</p> <p>5. Expenses.</p> <p>a. The teacher shall bear his 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>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 normal business hours if he receives his normal salary for the period of such service.</p> <p>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.</p> <p>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.</p> <p>C. Hearing by school board.</p> <p>1. After receipt of the notice of pending dismissal or placing on probation described in subdivision A 1 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 subsection B of this section, the teacher, as permitted by subdivision B 6 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.</p> <p>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</p>		

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	<p>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.</p> <p>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.</p> <p>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, and 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. 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.</p> <p>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.</p> <p>6. The school board shall give the teacher its written decision within 30 days after the completion of the hearing before the school board.</p> <p>7. The decision by the school board shall be based on the transcript, the findings of the 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.</p> <p>The school board's attorney, assistants, or representative, if he or they represented a participant in the prior proceedings, the grievant, the grievant's attorney, or representative and, notwithstanding the provisions of § 22.1-69 of the <i>Code of Virginia</i>, 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.</p>		

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	<p>DC. School board determination.</p> <p>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 the fact and recommendation. The decision of the school board shall be reached after considering the transcript, the findings of fact, and the recommendations made by the panel. In the event of a hearing before the school board, the school board shall give the teacher its written decision as soon as practicable and no more than 30 days after the hearing. The decision of the school board shall be reached after considering the evidence and information presented at the school board hearing.</p> <p>2. In the event of a hearing before a hearing officer followed by a further hearing by the school board pursuant to subparagraph 8 of paragraph B of this section, the school board shall give the teacher its written decision as soon as practicable and no more than 30 days after such further hearing. The decision of the school board shall be reached after considering the record or recording of the initial hearing, the recommendations of the hearing officer, and the evidence and information presented at the further hearing before the school board.</p> <p>3. In the event of a hearing before a hearing officer in cases in which no further hearing is conducted by the school board, the school board shall give the teacher its written decision as soon as practicable and no more than 30 days after receiving the record or recording of the hearing. The decision of the school board shall be reached after considering the record or recording of the hearing and the recommendations of the hearing officer.</p> <p>24. The school board may dismiss, or 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 recommendation of the fact finding panel, the school board shall be required to conduct an additional hearing, which shall be public unless the teacher requests a private one. However, if the fact finding hearing was held in private, the additional hearing shall be held in private. The hearing shall be conducted by the school board pursuant to subdivisions C 1 and 2 of this section, except that the grievant and the division superintendent shall be allowed to appear, to be represented, and to give testimony. However, the additional hearing shall not include examination and cross-examination of any other witnesses. The school board's written decision shall include the rationale for the decision. The school board's attorney, assistants, or representative, if he or they represented a participant in the prior proceedings, the grievant, the grievant's attorney or representative and, notwithstanding the provisions of § 22.1-69 of the Code of Virginia, the superintendent shall be excluded from any executive session of the school board which has as its purpose</p>		

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<p>8VAC20-90-80. Time limitations.</p> <p>APPENDICES</p>	<p><u>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.</u></p> <p>8VAC20-90-80. Time limitations.</p> <p>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.</p> <ol style="list-style-type: none"> 1. 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. 2. 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 option, to advance to the next step in the procedure or, at the final step, to a decision in his favor. 3. 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. <p>APPENDICES</p>		