

Article 11 - Grievance for Other than Dismissal and Probation of Teachers

Section 7-11.1. Orderly Procedure for Resolving Disputes Other than Dismissals; Grievance must be initiated within fifteen business days; Steps to Resolving Grievance. —

A. The purpose of this procedure 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. 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 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.

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

C. Grievances shall be processed as follows:

(a) Step 1 - Informal

The first step shall be an informal conference between the teacher and his or her immediate supervisor (which may be the principal). The teacher shall state the nature of the grievance, and the immediate supervisor shall attempt to adjust the grievance. It is mandatory that the teacher present the grievance informally prior to proceeding to Step 2. Teachers are not entitled to have lawyers or personal representatives present at the informal conference.

(b) Step 2 - Principal

If for any reason the grievance is not resolved informally in Step 1 to the satisfaction of the teacher, the teacher must perfect his or her grievance by filing said grievance in writing within fifteen (15) business days following the event giving rise to the grievance, or within fifteen (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 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.

A meeting shall be held between the principal (and/or his or her designee) and the teacher (and/or his or her designee) within five (5) business days of the receipt by the principal of the written grievance. At such a meeting,

the teacher and/or other party involved shall be entitled to present appropriate witnesses and have a representative present other than an attorney. The principal (and/or his or her designee) shall respond in writing within five (5) business days following such meeting.

(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 (5) 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 (and/or his or her designee) and the teacher (and/or his or her designee) at a mutually agreeable time within five (5) 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 Section 54.1-3904 of the Code of Virginia, as amended. If no settlement can be reached in said meeting, the Superintendent (or his or her designee) shall respond in writing within five (5) 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 ten (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 as provided in Step 4.

(d) Step 4 - Hearing Officer

In the event the grievance is not settled upon completion of Step 3 the teacher may request that a further hearing on the grievance be held. If the teacher elects to proceed to Step 4, he or she must notify the Superintendent in writing of the intention to request a further hearing and enclose a copy of the original grievance form within ten (10) business days after receipt of the Step 3 answer (or the due date of such answer). The School Board elects to have all requests for further hearings be assigned to a hearing officer who will be appointed by the School Board as provided by law. The School Board authorizes the Superintendent or designee to maintain a list of eligible hearing officers and make all arrangements for the appointment of a hearing officer and necessary arrangements for conducting such further hearings. The School Board may choose to hear a specific grievance rather than directing the grievance to a hearing officer at its sole discretion. If the School Board chooses to hear a specific grievance rather than have a hearing officer conduct the hearing, the School Board

will follow the procedure set forth in subsection 7-11.2 below; however no report will be made other than the School Board's final decision. (Adopted: June 9, 2016; Ordinance Number 15/16-56; Effective July 1, 2016).

Legal Authority — Code of Virginia §§ 22.1-306, 22.1-307, 22.1-309, 22.1-311, 22.1-313, and 22.1-314 (1950), as amended.

Section 7-11.2. Further Hearing; Procedure for Hearing before Hearing Officer; Expenses; Witnesses; Right to Further Hearing before School Board. — A. The further hearing shall be set within fifteen (15) days of the request and the teacher shall be given at least five days' written notice of the time and place. Waiver of the time period to hold the hearing may only happen for unusual or emergency circumstances. At the hearing, the teacher may appear with or without a representative. Non-availability of legal counsel or personal representatives due to scheduling issues will not constitute unusual or emergency circumstances for the purpose of waiving the time period.

B. The procedure for conducting a hearing before a hearing officer shall be as follows:

a. The hearing officer 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 hearing officer may ask for statements from the Superintendent and the teacher clarifying the issues involved at the beginning of the hearing and at the discretion of the hearing officer may allow closing statements.

c. The parties shall then present their claims in evidence. Witnesses may be questioned by the hearing officer, the teacher and the Superintendent, or their representatives. The hearing officer, in his discretion, may vary this procedure, but shall afford full and equal opportunity for all parties to present any material or relevant evidence and shall afford the parties the right of cross-examination.

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

e. Exhibits offered by the teacher or the Superintendent may be received in evidence by the hearing officer and, when so received, shall be marked and made a part of the record.

f. The hearing officer shall make a written recommendation to the School Board and the teacher as soon as practicable but no more than 10 business days after the close of the hearing.

g. The hearing officer shall create a recording of the hearing and transmit the recording along with the written recommendation to the School Board. The recording may be a stenographic record or tape recording. If the grievance concerns matters other than dismissal, the recording may be dispensed with entirely by mutual consent of the parties. If the recording is not dispensed with, the two (2) 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. If the grievance concerns a dismissal, the recording may not be dispensed with.

C. The teacher shall bear his or her own expenses. The School Board shall bear the expenses of the Superintendent. The expenses of the hearing officer shall be borne one-half by the School Board and one-half by the teacher. The Superintendent or superintendent's designee is authorized to set the per diem rate of the hearing officer.

D. 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.

E. Following a hearing by a hearing officer, the School Board may make its decision upon the record or recording of the hearing conducted before the hearing officer, or the School Board may elect to conduct a further hearing to receive additional evidence by giving written notice of the time and place to the teacher and the Superintendent within ten (10) business days after the School Board receives the record or recording of the initial hearing. Such notice shall specify each matter to be inquired into by the School Board. The School Board will give the teacher its written decision as soon as practicable and not more than thirty (30) days after receiving the record or recording of the hearing; however, should there be a further hearing before the School Board, such decision shall be furnished the teacher as soon as practicable and not more than thirty (30) days after such further hearing has concluded. (Adopted: June 9, 2016; Ordinance Number 15/16-56; Effective July 1, 2016).

Legal Authority — Code of Virginia §§ 22.1-306, 22.1-307, 22.1-309, 22.1-311, 22.1-313, and 22.1-314 (1950), as amended.

Section 7-11.3. School Board's Attorney, etc. Excluded from Closed Meeting. — 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 Virginia Code § 22.1-69, as amended, the Superintendent shall be excluded from any closed meeting 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 closed session to assist in the writing of the decision. (Adopted: June 9, 2016; Ordinance Number 15/16-56; Effective July 1, 2016).

Legal Authority — Code of Virginia §§ 22.1-306, 22.1-307, 22.1-309, 22.1-311, 22.1-313, and 22.1-314 (1950), as amended.

Section 7-12.2. Notice to Teacher of Recommendation for Dismissal; Merits not to be considered; Reasons for recommendation to be provided upon request; Opportunity to Inspect and Copy Personnel File and Other Documents; Continuing Duty. — A. In the event the Superintendent determines to recommend dismissal of any teacher, written notice shall be sent to the teacher on forms to be prescribed by the Virginia Board of Education notifying him or her of the proposed dismissal and informing the teacher that within ten (10) business days after receiving the notice, the teacher may

request a hearing before the School Board. The School Board elects to have all requests for further hearings be assigned to a hearing officer who will be appointed by the School Board as provided by law. The School Board authorizes the Superintendent or designee to maintain a list of eligible hearing officers and make all arrangements for the appointment of a hearing officer and necessary arrangements for conducting such further hearings. At its sole discretion, the School Board may choose to hear a specific grievance rather than directing the grievance to a hearing officer.

B. During such ten (10) business day period and thereafter until a hearing is held in accordance with the provisions of this section if one is requested by the teacher, the merits of the recommendation of the Superintendent or designee shall not be considered, discussed, or acted upon by the School Board except as provided for in this section.

C. At the request of the teacher, the Superintendent or designee will provide the reasons for the recommendation in writing or, if the teacher prefers, in a personal interview.

D. In the event that a teacher requests a hearing, the Superintendent or designee shall provide, within ten (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. Within ten (10) days of the request of the Superintendent or designee, the teacher or his representative shall provide the Superintendent or designee with the opportunity to inspect and copy the documents to be offered in rebuttal to the decision to recommend dismissal.

E. The Superintendent or designee 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. (Adopted: June 9, 2016; Ordinance Number 15/16-56; Effective July 1, 2016).

Legal Authority — Code of Virginia §§ 22.1-306, 22.1-307, 22.1-309, 22.1-311, 22.1-313, and 22.1-314 (1950), as amended.

Section 7-12.3. Holding of Hearing; Procedure for Hearing; Expenses; List of Eligible Hearing Officers. — A. The hearing shall be held within fifteen (15) calendar days from the date of the request for a hearing. The teacher and the Superintendent each may have present at the hearing and be represented at all stages by a legal counsel and another representative.

B. The procedure for conducting a hearing before a hearing officer shall be as follows:

a. The hearing officer or the School Board (if the hearing is before the School Board) 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 public.

b. At the beginning of the hearing, statements from the Superintendent and the teacher (or their representatives) clarifying the issues will be allowed and, at the discretion of the hearing officer or the School Board closing statements, also may be allowed.

c. The parties shall then present their claims in evidence. Witnesses may be questioned by the hearing officer or the School Board or by the teacher and the

Superintendent, or their representatives. However, the hearing officer or the School Board 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.

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

e. Exhibits offered by the teacher or the Superintendent may be received in evidence and, when so received, shall be marked and made a part of the record.

f. In hearings before a hearing officer, the written recommendations made by the hearing officer shall be based exclusively upon the evidence presented at the hearing.

g. The hearing may be reopened by the hearing officer at any time before the hearing officer's report is made or before the School Board has rendered a final decision. Upon its own motion, the hearing officer or the School Board, may reopen the hearing or may reopen upon application of the teacher or the Superintendent for good cause shown to hear after-discovered evidence.

h. If the recommendation for dismissal is heard before a hearing officer, the hearing officer shall make a written recommendation to the School Board, the Superintendent, and the teacher, not later than ten (10) business days after the completion of the hearing.

i. A stenographic record or tape recording of the proceedings shall be taken. In cases of dismissal, 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-(6) 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 transcription.

C. The teacher shall bear his or her own expenses. The School Board shall bear the expenses of the Superintendent. The expenses of the hearing officer shall be borne one-half by the School Board and one-half by the teacher.

D. The School Board authorizes the Superintendent or designee to maintain a list of eligible hearing officers and make all arrangements for the appointment of a hearing officer and necessary arrangements for conducting such hearings. (Adopted: June 9, 2016; Ordinance Number 15/16-56; Effective July 1, 2016).

Legal Authority — Code of Virginia §§ 22.1-306, 22.1-307, 22.1-309, 22.1-311, 22.1-313, and 22.1-314 (1950), as amended.

Section 7-12.4. Decision by the School Board and Further Hearing; Representation Allowed; Record of Proceedings Required; Excluded from Closed Meeting. — A. At its sole discretion, the School Board may choose to hear a specific grievance rather than directing the grievance to a hearing officer. If the School Board hears the grievance, the School Board will render its decision within ten (10) business days after the close of the

hearing. If the hearing is held before a hearing officer, the School Board may make its decision upon the record or recording the hearing as well as the hearing officer's report or it may elect to hold a further hearing to receive additional evidence. In either circumstance, the School Board will reach its decision on the case by a majority vote of a quorum of the School Board. If the School Board elects to hold a further hearing, it will give written notice to the Superintendent and the teacher within ten (10) business days after it receives the record or recording of initial hearing. Such notice shall also specify the matter to be inquired into by the School Board. In the case of a hearing before the School Board, the School Board shall give the teacher its written decision as soon as practicable but not more than thirty (30) days after the hearing. A teacher may be dismissed or suspended by a majority vote of a quorum of the School Board.

B. The teacher and the 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 Superintendent to make an opening statement and to present all material or relevant evidence and to cross-examine the witnesses. Witnesses may be questioned by the School Board.

C. A record or recording of the proceedings shall be made and preserved for a period of six (6) 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 transcription.

D. 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 Virginia Code Section 22.1-69, as amended, 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. (Adopted: June 9, 2016; Ordinance Number 15/16-56; Effective July 1, 2016).

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