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## Fast-Track Regulation Agency Background Document

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| <b>Agency name</b>  | Virginia Board of Education  |
| <b>Virginia Administrative Code (VAC) Chapter citation(s)</b> | 8VAC20-90-10;<br>8VAC20-90-70  |
| <b>VAC Chapter title(s)</b>                                   | <i>Procedure for Adjusting Grievances</i>  |
| <b>Action title</b>   | Proposed Amendments to the Procedure for Dismissals to Comport with Legislation from the 2020 General Assembly |
| <b>Date this document prepared</b>                            | February 2, 2023   |

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19, the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

### Brief Summary

*Provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.*

[Chapter 875](#) of the 2020 Acts of the Virginia General Assembly requires amendments to the *Procedure for Adjusting Grievances* (*Procedure*; [8VAC20-90](#)), particularly the procedure for dismissals found in [8VAC20-90-70](#). [Chapter 875](#) amended §§ [22.1-309](#) and [22.1-311](#) of the *Code of Virginia* to permit a school board to conduct a teacher grievance hearing before a three-member fact-finding panel consisting of one member selected by the teacher, one member selected by the division superintendent, and an impartial hearing officer selected by the other two panel members to serve as the chairman of the panel. Under the amended law, the school board continues to have the option of appointing a hearing officer or conducting the hearing itself. The legislation also removed the requirement that a teacher grievance hearing be set within 15 days of the request for such hearing and extends from five days to 10 days the minimum period of advanced written notice to the teacher of the time and place of such hearing. Other changes are designed to align the regulatory text with §§ [22.1-309](#) and [22.1-311](#) of the *Code of Virginia*.

The Board is also taking action to align [8VAC20-90-70](#) with §§ [22.1-309](#) and [22.1-311](#), as required by § [22.1-308\(A\)\(9\)](#) of the *Code of Virginia*.

This action also includes amendments to [8VAC20-90-10](#) in order to conform the definition of “grievance” and add a definition of “military status,” pursuant to [Chapter 1137](#) of the 2020 Acts of the Virginia General Assembly and [Chapter 477](#) of the 2021 Acts of the Virginia General Assembly, respectively.

## Acronyms and Definitions

*Define all acronyms used in this form, and any technical terms that are not also defined in the “Definitions” section of the regulation.*

“Board” means the Virginia Board of Education.

## Statement of Final Agency Action

*Provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) the name of the agency taking the action; and 3) the title of the regulation.*

This action was approved by the Board on February 2, 2023.

## Mandate and Impetus

*Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, “mandate” has the same meaning as defined in the ORM procedures, “a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part.”*

*Consistent with Virginia Code § 2.2-4012.1, also explain why this rulemaking is expected to be noncontroversial and therefore appropriate for the fast-track rulemaking process.*

Section [22.1-308\(A\)\(9\)](#) of the *Code of Virginia* requires the Board to prescribe a grievance procedure that includes “[t]he provisions of §§ [22.1-309](#) through [22.1-313](#).”

During the 2020 Session, the General Assembly passed legislation ([SB377](#)) requiring amendments to the *Procedure for Adjusting Grievances (Procedure; 8VAC20-90)*. [SB377](#) amended §§ [22.1-309](#) and [22.1-311](#) of the *Code of Virginia* to permit a school board to conduct a teacher grievance hearing before a three-member fact-finding panel consisting of one member selected by the teacher, one member selected by the division superintendent, and an impartial hearing officer selected by the other two panel members to serve as the chairman of the panel. Under the amended law, the school board continues to have the option of appointing a hearing officer or conducting the hearing itself. The legislation also removed the requirement that a teacher grievance hearing be set within 15 days of the request for such hearing and extends from five days to 10 days the minimum period of advanced written notice to the teacher of the time and place of such hearing. Other changes are designed to align the regulatory text with §§ [22.1-309](#) and [22.1-311](#) of the *Code of Virginia*.

This action also includes amendments to [8VAC20-90-10](#) in order to conform the definition of “grievance” and add a definition of “military status,” pursuant to legislation in [2020](#) and [2021](#), respectively.

This rulemaking is expected to be noncontroversial and therefore appropriate for the fast-track rulemaking process because the proposed changes are required by Virginia statute and the agency is not exercising discretion in the changes.

## Legal Basis

*Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia and Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency's overall regulatory authority.*

Section [22.1-16](#) of the *Code of Virginia* states that “[t]he 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 [\[Title 22.1 of the Code of Virginia\]](#).”

Section [22.1-308\(A\)\(9\)](#) of the *Code of Virginia* requires the Board to prescribe a grievance procedure that includes “[t]he provisions of §§ [22.1-309](#) through [22.1-313](#).”

[Chapter 875](#) of the 2020 Acts of the Virginia General Assembly requires amendments to the *Procedure for Adjusting Grievances*.

[Chapter 1137](#) of the 2020 Acts of the Virginia General Assembly requires the Board to amend the definition of “grievance” in [8VAC20-90-10](#).

[Chapter 477](#) of the 2021 Acts of the Virginia General Assembly requires the Board to add a definition of “military status” in [8VAC20-90-10](#).

## Purpose

*Explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it is intended to solve.*

This regulatory change is required by legislative changes enacted by the Virginia General Assembly.

## Substance

*Briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the “Detail of Changes” section below.*

Section [22.1-308\(A\)\(9\)](#) of the *Code of Virginia* requires the Board to prescribe a grievance procedure that includes “[t]he provisions of §§ [22.1-309](#) through [22.1-313](#).”

[Chapter 875](#) of the 2020 Acts of the Virginia General Assembly requires amendments to the *Procedure for Adjusting Grievances*.

[Chapter 1137](#) of the 2020 Acts of the Virginia General Assembly requires the Board to amend the definition of “grievance” in [8VAC20-90-10](#).

[Chapter 477](#) of the 2021 Acts of the Virginia General Assembly requires the Board to add a definition of “military status” in [8VAC20-90-10](#).

### Issues

*Identify the issues associated with the regulatory change, 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 there are no disadvantages to the public or the Commonwealth, include a specific statement to that effect.*

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The primary advantage of the regulatory change is that it effectuates changes made by the Virginia General Assembly.

### Requirements More Restrictive than Federal

*Identify and describe any requirement of the regulatory change which is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements, or no requirements that exceed applicable federal requirements, include a specific statement to that effect.*

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There are no applicable federal requirements.

### Agencies, Localities, and Other Entities Particularly Affected

*Consistent with § 2.2-4007.04 of the Code of Virginia, identify any other state agencies, localities, or other entities particularly affected by the regulatory change. Other entities could include local partners such as tribal governments, school boards, community services boards, and similar regional organizations. “Particularly affected” are those that are likely to bear any identified disproportionate material impact which would not be experienced by other agencies, localities, or entities. “Locality” can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.*

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#### Other State Agencies Particularly Affected

This action will not affect other state agencies.

#### Localities Particularly Affected

This action will not affect localities.

#### Other Entities Particularly Affected

This action will not affect other entities.

### Economic Impact

Consistent with § 2.2-4007.04 of the Code of Virginia, identify all specific economic impacts (costs and/or benefits), anticipated to result from the regulatory change. When describing a particular economic impact, specify which new requirement or change in requirement creates the anticipated economic impact. Keep in mind that this is the proposed change versus the status quo.

**Impact on State Agencies**

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| <p><i>For your agency:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including:</p> <ul style="list-style-type: none"> <li>a) fund source / fund detail;</li> <li>b) delineation of one-time versus on-going expenditures; and</li> <li>c) whether any costs or revenue loss can be absorbed within existing resources</li> </ul> | <p>There are no projected costs, savings, fees, or revenues resulting from the regulatory change. The amendment to the grievance procedure and the definitions changed by this action are already state law.</p> |
| <p><i>For other state agencies:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including a delineation of one-time versus on-going expenditures.</p>   | <p>There are no projected costs, savings, fees, or revenues resulting from the regulatory change. The amendment to the grievance procedure and the definitions changed by this action are already state law.</p> |
| <p><i>For all agencies:</i> Benefits the regulatory change is designed to produce.</p>   | <p>The regulatory change aligns state regulation to Virginia law.</p>  |

**Impact on Localities**

If this analysis has been reported on the ORM Economic Impact form, indicate the tables (1a or 2) on which it was reported. Information provided on that form need not be repeated here.

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| <p>Projected costs, savings, fees or revenues resulting from the regulatory change.</p> | <p>There are no projected costs, savings, fees, or revenues resulting from the regulatory change. The amendment to the grievance procedure and the definitions changed by this action are already state law.</p> |
| <p>Benefits the regulatory change is designed to produce.</p>                           | <p>The regulatory change aligns state regulation to Virginia law.</p>  |

**Impact on Other Entities**

If this analysis has been reported on the ORM Economic Impact form, indicate the tables (1a, 3, or 4) on which it was reported. Information provided on that form need not be repeated here.

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| <p>Description of the individuals, businesses, or other entities likely to be affected by the regulatory change. If no other entities will be affected, include a specific statement to that effect.</p>   | <p>The regulatory change will not affect individuals, businesses, or other entities. The amendment to the grievance procedure and the definitions changed by this action are already state law.</p>              |
| <p>Agency's best estimate of the number of such entities that will be affected. Include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that:</p> <ul style="list-style-type: none"> <li>a) is independently owned and operated and;</li> <li>b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</li> </ul> | <p>There are no projected costs, savings, fees, or revenues resulting from the regulatory change. The amendment to the grievance procedure and the definitions changed by this action are already state law.</p> |

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| <p>All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Be specific and include all costs including, but not limited to:</p> <ul style="list-style-type: none"> <li>a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses;</li> <li>b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change;</li> <li>c) fees;</li> <li>d) purchases of equipment or services; and</li> <li>e) time required to comply with the requirements.</li> </ul> | <p>There are no projected costs resulting from the regulatory change. The amendment to the grievance procedure and the definitions changed by this action are already state law.</p> |
| <p>Benefits the regulatory change is designed to produce.</p>   | <p>The regulatory change aligns state regulation to Virginia law.</p>  |

### Alternatives to Regulation

*Describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. 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 regulatory change.*

There are no alternatives to the regulatory change.

### Regulatory Flexibility Analysis

*Consistent with § 2.2-4007.1 B of the Code of Virginia, 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) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing 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 regulatory change.*

There are no alternatives to the regulatory action.

### Public Participation

*Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below.*

*Consistent with § 2.2-4011 of the Code of Virginia, if an objection to the use of the fast-track process is received within the 30-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall: 1) file notice of the objections with the Registrar of Regulations for*

publication in the Virginia Register and 2) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

If you are objecting to the use of the fast-track process as the means of promulgating this regulation, please clearly indicate your objection in your comment. Please also indicate the nature of, and reason for, your objection to using this process.

The Board of Education is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal and any alternative approaches, (ii) the potential impacts of the regulation, and (iii) the agency's regulatory flexibility analysis stated in this background document.

Anyone wishing to submit written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at: <https://townhall.virginia.gov>. Comments may also be submitted by email Jim Chapman, Director of Board Relations, at [Jim.Chapman@doe.virginia.gov](mailto:Jim.Chapman@doe.virginia.gov). In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

### Detail of Changes

List all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Use all tables that apply, but delete inapplicable tables.

If an existing VAC Chapter(s) is being amended or repealed, use Table 1 to describe the changes between existing VAC Chapter(s) and the proposed regulation. If existing VAC Chapter(s) or sections are being repealed and replaced, ensure Table 1 clearly shows both the current number and the new number for each repealed section and the replacement section.

**Table 1: Changes to Existing VAC Chapter(s)**

| Current chapter-section number | New chapter-section number, if applicable | Current requirements in VAC   | Change, intent, rationale, and likely impact of new requirements   |
|--------------------------------|---|---|--|
| 8VAC20-90-10                   |   | The current section includes a definition of "grievance" and no definition of "military status" | The proposed regulatory change aligns the definition of "grievance" with the definition in § <a href="#">22.1-306</a> of the Code of Virginia.<br><br>The proposed regulatory change adds a definition of "military status" that matches the definition in § <a href="#">22.1-306</a> of the Code of Virginia. |
| 8VAC20-90-70                   |   |   | The proposed changes reflect the new amended provisions of §§ <a href="#">22.1-309</a> and <a href="#">22.1-311</a> of the Code of Virginia and permit a school board to conduct a teacher grievance hearing before a three-member fact-finding panel consisting of one member selected by                     |

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|  |  |  | <p>the teacher, one member selected by the division superintendent, and an impartial hearing officer selected by the other two panel members to serve as the chairman of the panel. Under the amended law, the school board continues to have the option of appointing a hearing officer or conducting the hearing itself. The legislation also removed the requirement that a teacher grievance hearing be set within 15 days of the request for such hearing and extends from five days to 10 days the minimum period of advanced written notice to the teacher of the time and place of such hearing.</p> <p>Other changes are designed to align the regulatory text with §§ <a href="#">22.1-309</a> and <a href="#">22.1-311</a> of the <i>Code of Virginia</i>.</p> |
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