



Exempt Action Final Regulation Agency Background Document

Agency name	Board of Education
Virginia Administrative Code (VAC) citation	8 VAC 20-90-10, 30, 40, 70, 90
Regulation title	Procedure for Adjusting Grievances
Action title	Amend sections 10, 30, 40, 70, 90 to align with <u>Code of Virginia</u>
Final agency action date	October 28, 2004
Document preparation date	January 27, 2005

When a regulatory action is exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 of the Virginia Administrative Process Act (APA), the agency is encouraged to provide information to the public on the Regulatory Town Hall using this form.

Note: While posting this form on the Town Hall is optional, the agency must comply with requirements of the Virginia Register Act, the *Virginia Register Form, Style, and Procedure Manual*, and Executive Orders 21 (02) and 58 (99).

Summary

Please provide a brief summary of all regulatory changes, including the rationale behind such changes. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

The Procedure for Adjusting Grievances (8 VAC 20-90-10 et seq.) was amended to reflect Code of Virginia revisions. These regulations provide an orderly procedure for resolving disputes concerning application of local school board policies, rules, and regulations as they affect the work of employees, and disciplinary actions which include dismissal or probation.

The Virginia Board of Education regulations, the Procedure for Adjusting Grievances (8 VAC 20-90-10 et seq.) have been reviewed. Based on this review, revisions are needed to align the regulations with changes in the Code of Virginia. All revisions, except for a few citation references, are exact language changes from the Code. Amendments were made in the following areas: "business day" was defined and clarified throughout; role of the principal, superintendent, and school board; selection of impartial third member; procedures for hearings and fact-finding, timeline for and production of evidence during the hearing; and recording of proceedings.

(See below for a chart detailing the changes in the regulation and the Code citation.)

Family impact

Assess the impact of this regulatory action on the institution of the family and family stability.

The revision in the Procedures for Adjusting Grievances will not impact the institution of the family and family stability.

DETAIL OF AMENDMENTS:

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

Revisions in the Procedure for Adjusting Grievances	Rationale for Revision
<p>8 VAC 20-90-10 et seq. The term “working day” was replaced with “business day” throughout the regulations to comport with the language of the Code. Definition of “business day” is added.</p>	<p>Exact language change From the <u>Code of Virginia</u> § 22.1-312, N.</p>
<p>8 VAC 20-90-30, B The principal may forward to the teacher within five days from the receipt of the written grievance a written request for more specific information regarding the grievance. The teacher shall file an answer to that <u>thereto</u> within 10 working <u>business</u> days, and the meeting must then be held within five <u>business</u> days after that <u>thereafter</u>.</p>	<p>Editorial Revision (no substantive change)</p>
<p>8 VAC 20-90-30, D, 2 Selection of Impartial Third Member. In the event that both panel members are unable to agree upon a third panel member within five working <u>business</u> days, both members of the panel shall request the chief judge of the circuit court having jurisdiction of the school division to furnish a list of five qualified and impartial individuals from which one individual shall be selected by the two members of the panel to serve as the third member. The individuals named by the chief judge may reside either within or outside the jurisdiction of the circuit court, be residents of the Commonwealth of Virginia, and <u>in all cases shall</u> possess some knowledge and expertise in public education and education law and shall be deemed by the judge to be capable of presiding over an administrative hearing. Within five <u>business</u> days after receipt by the two panel members of the list of fact finders nominated by the chief judge, the panel members shall meet to select the third panel member. Selection shall be made by alternately deleting names from the list until only one remains. The panel member selected by the teacher shall make the first deletion. The third impartial panel member shall chair the panel. No elected official shall serve as a panel member. <u>Panel members shall not be parties to, or witnesses to, the matter grieved. With the agreement of the teacher's and division superintendent's panel members, the impartial panel member shall have the authority to conduct the hearing and make recommendations as set forth herein while acting as a hearing officer.</u></p> <p><u>The Attorney General shall represent personally or through one of his assistants any third impartial panel member who shall be made a defendant in any civil</u></p>	<p>Exact language change From the <u>Code of Virginia</u> § 22.1-312, A.</p>

Revisions in the Procedure for Adjusting Grievances	Rationale for Revision
<p><u>action arising out of any matter connected with his duties as a panel member. If, in the opinion of the Attorney General, it is impracticable or uneconomical for such legal representation to be rendered by him or one of his assistants, he may employ special counsel for this purpose, whose compensation shall be fixed by the Attorney General and be paid out of the funds appropriated for the administration of the Department of Education.</u></p>	
<p>8 VAC 20-90-30, D, 3 3. Holding of Hearing. The hearing shall be held by the panel within 30 calendar business days from the date of selection of the final panel member. The panel shall set the date, place, and time for the hearing and shall so notify the division superintendent and the teacher. The teacher and the division superintendent each may have present at the hearing and be represented at all stages by a representative or legal counsel.</p>	<p>Exact language change From the <u>Code of Virginia</u> §22.1-308.4 § 22.1-312, A.</p>
<p style="text-align: center;">8 VAC 20-90-30, D, 4, b & c</p> <p>b. The panel may ask, <u>at the beginning of the hearing,</u> for statements from the division superintendent and the teacher clarifying the issues involved. at the beginning of the hearing and at the discretion of the panel may allow closing statements.</p> <p>c. The parties shall then present their claims in and evidence. Witnesses may be questioned by the panel members, or by the teacher and the division superintendent. or their representative. The panel <u>may, in at its discretion, may</u> vary this procedure, but shall afford full <u>and equal opportunity for</u> to all parties to present any material or relevant evidence and shall afford the parties the right of cross-examination.</p>	<p>Exact language change From the <u>Code of Virginia</u> § 22.1-312, D.</p>
<p style="text-align: center;">8 VAC 20-90-30, D, 4, d</p> <p>d. The parties shall produce such additional evidence as the panel may deem necessary to an understanding and determination of the dispute. The panel may <u>shall</u> be the judge of the relevancy and materiality of the evidence offered. All evidence shall be taken in the presence of the panel and of the parties</p>	<p>Exact language change From the <u>Code of Virginia</u> § 22.1-312, D.</p>
<p style="text-align: center;">8 VAC 20-90-30, D, 4, f&g</p> <p>f. The finding of facts <u>facts found</u> and recommendations <u>made</u> by the panel shall be based exclusively upon the evidence presented at the hearing and the panel's recommendations shall be arrived at by a majority vote of the panel members.</p> <p>g. On its own motion or upon application of the teacher or division superintendent, t The hearing may be reopened by the panel, <u>on its own motion or upon application of the teacher or the division superintendent</u> for good cause shown, at any time to hear after-discovered evidence <u>at any time</u> before its final report is delivered <u>the panel's report is made.</u></p>	<p>Exact language change From the <u>Code of Virginia</u> § 22.1-312, F.</p> <p>Exact language change From the <u>Code of Virginia</u> § 22.1-312, G.</p>
<p>8 VAC 20-90-30, D, 4, h. The panel shall make a written report that shall include its findings of fact and recommendations and shall file it with the members of the school board, the division superintendent, and the teacher, not later than 30 <u>business</u> days after the completion of the hearing.</p>	<p>Exact language change From the <u>Code of Virginia</u> § 22.1-312, H.</p>

Revisions in the Procedure for Adjusting Grievances	Rationale for Revision
<p style="text-align: center;">8 VAC 20-90-30, D, 4, i & j</p> <p>i. A stenographic record or tape recording <u>of the proceedings</u> shall be taken of the proceedings. <u>However, in proceedings concerning grievances not related to dismissal or probation,</u> the recording may be dispensed with entirely by mutual consent of the parties. <u>In such proceedings,</u> if the recording is not dispensed with, the two parties shall share equally the cost of the recording. If either party requests a transcript, that party shall bear the expense involved in preparing it <u>of its preparation.</u></p> <p><u>In cases of dismissal or probation, a record or recording of the proceedings shall be made and preserved for a period of six months. If either the teacher or the school board requests that a transcript of the record or recording be made at any time prior to expiration of the six-month period, it shall be made and copies shall be furnished to both parties. The school board shall bear the expense of the recording and the transcription.</u></p> <p>j. <u>The recommendations and findings of fact of the panel submitted to the school board shall be based exclusively upon the evidence presented to the panel at the hearing. No panel member shall conduct an independent investigation involving the matter grieved.</u></p>	<p>Exact language change From the <u>Code of Virginia</u> § 22.1-312, I.</p> <p>Exact language change From the <u>Code of Virginia</u> § 22.1-312, L.</p>
<p style="text-align: center;">8 VAC 20-90-30, D, 5, a</p> <p>a. The teacher shall bear his <u>or her</u> own expenses. The school board shall bear the expenses of the division superintendent. The expenses of the panel shall be borne one half by the school board and one half by the teacher.</p>	<p>Exact language change From the <u>Code of Virginia</u> § 22.1-312, J.</p>
<p style="text-align: center;">8 VAC 20-90-30, E, 2</p> <p>2. In the case of a hearing before a fact-finding panel, the school board shall give the grievant its written decision within 30 days after the school board receives both the transcript of such hearing, if any, and the panel's finding of fact and recommendations unless the school board proceeds to a hearing under §2-2 Subsection E.3 <u>Subdivision E.3. of this section.</u> The decision of the school board shall be reached after considering the transcript, if any; the findings of fact and recommendations of the panel; and such further evidence as the school board may receive at any further hearing that the school board elects to conduct.</p>	<p>Editorial Revision To locate referenced citation (no substantive change)</p>
<p style="text-align: center;">8 VAC 20-90-30, E, 3, a</p> <p>3. In any case in which a hearing before a fact-finding panel is held in accordance with Step 4, the local school board may conduct a further hearing before such school board.</p> <p>a. The local school board shall initiate such hearing by sending written notice of its intention to the teacher and the division superintendent within 10 <u>business</u> days after receipt by the board of the findings of fact and recommendations of the fact-finding panel and any transcript of the panel hearing. Such notice shall be provided upon forms to be prescribed by the Board of Education and shall specify each matter to be inquired into by the school board.</p>	<p>Exact language change From the <u>Code of Virginia</u> § 22.1-313, D.</p>
<p style="text-align: center;">8 VAC 20-90-30, E, 3, c</p> <p>A stenographic record or tape recording of the proceedings shall be taken.</p>	<p>Exact language change From the</p>

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<p>However, <u>in proceedings concerning grievances not related to dismissal or Probation</u>, the recording may be dispensed with entirely by mutual consent of the parties. <u>In such proceedings, if the recording is not dispensed with</u>, the two parties shall share the cost of the recording equally; if either party requests a transcript, that party shall bear the expense of its preparation.</p> <p><u>In the case of dismissal or probation, a record or recording of the proceedings shall be made and preserved for a period of six months. If either the teacher or the school board requests that a transcript of the record or recording be made at any time prior to expiration of the six-month period, it shall be made and copies shall be furnished to both parties. The school board shall bear the expense of the recording and the transcription.</u></p>	<p><u>Code of Virginia</u> § 22.1-312, I.</p>
<p style="text-align: center;">8 VAC 20-90-40, A</p> <p>A. Initial Determination of Grievability. Decisions regarding whether a matter is grievable shall be made by the school board at the request of the division superintendent or grievant. The school board shall reach its decision only after allowing the division superintendent and the grievant opportunity to present written or oral arguments regarding grievability. The decision as to whether the arguments shall be written or oral shall be in the discretion of the school board. Decisions shall be made within 10 <u>business</u> days of such request. Such determination of grievability shall be made subsequent to the reduction of the grievance to writing but prior to any panel or board hearing or the right to such determination shall be deemed to have been waived. Failure of the school board to make such a determination within such a prescribed 10-<u>business</u> day period shall</p>	<p>Exact language change From the <u>Code of Virginia</u> § 22.1-314</p>
<p style="text-align: center;">8 VAC 20-90-40, B, 1, a, b, & c</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 <u>business</u> days after the date of the decision and giving a copy thereof to all other parties.</p> <p>b. Within 10 <u>business</u> days thereafter, the school board shall transmit to the clerk of the court to which the appeal is taken a copy of its decision, a copy of the notice of appeal and the exhibits. The failure of the school board to transmit the record within the time allowed shall not prejudice the rights of the grievant. The court, on motion of the grievant, may issue a writ of certiorari requiring the school board to transmit the record on or before a certain date.</p> <p>c. Within 10 <u>business</u> days of receipt by the clerk of such record, the court, sitting without a jury, shall hear the appeal on the record transmitted by the school board and such additional evidence as may be necessary to resolve any controversy as to the correctness of the record. The court, in its discretion, may receive such other evidence as the ends of justice require.</p>	<p>Exact language change From the <u>Code of Virginia</u> § 22.1-314</p>

<p style="text-align: center;">8 VAC 20-90-70, A, 3</p> <p>3. At the request of the teacher, the superintendent shall provide the reasons for the recommendation in writing or, if the teacher prefers, in a personal interview. In the event a teacher requests a hearing pursuant to §22.1-311 or §22.1-312, the division superintendent shall provide, within 10 days of the request, the teacher or his representative with the opportunity to inspect and copy his personnel file and all other documents relied upon in reaching the decision to recommend dismissal or probation. Within 10 days of the request of the division superintendent, the teacher or his representative shall provide the division superintendent with the opportunity to inspect and copy the documents to be offered in rebuttal to the decision to recommend dismissal or probation. <u>The division superintendent and the teacher or his representative shall be under a continuing duty to disclose and produce any additional documents identified later which may be used in the respective parties' cases-in-chief.</u> The cost of copying such documents shall be paid by the requesting party.</p>	<p>Exact language change From the <u>Code of Virginia</u> § 22.1-309</p>
<p style="text-align: center;">8 VAC 20-90-70, B</p> <p>B. Fact-Finding Panel. Within 15 days after the teacher receives the notice referred to in §3.1 Subsection A.1. Subdivision A1 of this section, either the teacher or the school board, by written notice to the other party upon a form to be prescribed by the Board of Education, may elect to have a hearing before a fact-finding panel prior to any decision by the school board.</p>	<p>Editorial Revision To locate referenced citation (no substantive change)</p>
<p style="text-align: center;">8 VAC 20-90-70, B, 2</p> <p>1. Selection of Impartial Third Member. In the event that both panel members are unable to agree upon a third panel member within five working <u>business</u> days, both members of the panel shall request the chief judge of the circuit court having jurisdiction of the school division to furnish a list of five qualified and impartial individuals from which list one individual shall be selected by the two members of the panel as the third member. The individuals named by the chief judge may reside either within or without the jurisdiction of the circuit court, be residents of the Commonwealth of Virginia, and in all cases shall possess some knowledge and expertise in public education and education law and shall be deemed by the judge capable of presiding over an administrative hearing. Within five <u>business</u> days after receipt by the two panel members of the list of fact finders nominated by the chief judge, the panel members shall meet to select the third panel member. Selection shall be made by the panel members, alternately deleting names from the list until only one remains with the panel member selected by the teacher to make the first deletion. The third impartial panel member shall chair the panel. No elected official shall serve as a panel member. <u>Panel members shall not be parties to, or witnesses to, the matter grieved. With the agreement of the teacher's and division superintendent's panel members, the impartial panel member shall have the authority to conduct the hearing and make recommendations as set forth herein while acting as a hearing officer.</u></p> <p><u>The Attorney General shall represent personally or through one of his assistants any third impartial panel member who shall be made a defendant in any civil action arising out of any matter connected with his duties as a panel member. If, in the opinion of the Attorney General, it is impracticable or uneconomical for such legal representation to be rendered by him or one of his assistants, he may employ special counsel of this purpose, whose compensation shall be fixed by the Attorney General and be paid out of the funds appropriated for the administration of the Department of Education.</u></p>	<p>Exact language change From the <u>Code of Virginia</u> § 22.1-312, A.</p>

<p style="text-align: center;">8 VAC 20-90-70, B, 3</p> <p>3. Holding of Hearing. The hearing shall be held by the panel within 30 calendar <u>business</u> days from the date of the selection of the final panel member. The panel shall set the date, place, and time for the hearing and shall so notify the division superintendent and the teacher. The teacher and the division superintendent each may have present at the hearing and be represented at all stages by legal counsel or another representative.</p>	<p>Exact language change From the <u>Code of Virginia</u> §22.1-308,4 § 22.1-312, A.</p>
<p style="text-align: center;">8 VAC 20-90-70, B, 4,b&c</p> <p>b. The panel may ask, <u>at the beginning of the hearing,</u> for statements from the division superintendent and the teacher (or their representative) clarifying the issues involved, at the beginning of the hearing and at the discretion of the panel may allow closing statements.</p> <p>c. The parties shall then present their claims in <u>and</u> evidence. Witnesses may be questioned by the panel members, and by the teacher and the division superintendent or their representative. However, the panel may, at its discretion, vary this procedure but shall afford full and equal opportunity to all parties for presentation of any material or relevant evidence and shall afford the parties the right of cross examination.</p>	<p>Exact language change From the <u>Code of Virginia</u> § 22.1-312, D.</p>
<p style="text-align: center;">VAC 20-90-70, B, 4, f, g, &j</p> <p>f. <u>The facts found and recommendations made by the panel shall be arrived at by a majority vote of the panel members.</u></p> <p>fg. The facts found and recommendations and findings of fact made by of the panel shall be based exclusively upon the evidence presented to the panel at the hearing, and such facts found and recommendations made shall be arrived at by a majority vote of the panel members. No panel member shall conduct an independent investigation involving the matter grieved.</p> <p>kj. A stenographic record or tape recording of the proceedings shall be taken. <u>However, in proceedings concerning grievances not related to dismissal or probation, the recording may be dispensed with entirely by mutual consent of the parties. In such proceedings, if the recording is not dispensed with, the two parties shall share the cost of the recording equally; if either party requests a transcript, that party shall bear the expense of its preparation.</u></p>	<p>Exact language change From the <u>Code of Virginia</u> § 22.1-312, F.</p> <p>Exact language change From the <u>Code of Virginia</u> § 22.1-312, L.</p> <p>Exact language change From the <u>Code of Virginia</u> § 22.1-312, I.</p>
<p style="text-align: center;">VAC 20-90-70, C, 1.</p> <p>1. After receipt of the notice of pending dismissal or placing on probation described in §3.1 Subsection A. 1. Subdivision A1 <u>of this section,</u> the teacher may request a hearing before the school board by delivering written notice to the division superintendent within 15 days from the receipt of notice from the superintendent. Subsequent to the hearing by a fact-finding panel under §3.1 Subsection B. Subdivision B, <u>the teacher, as permitted by §3.1 Subsection B. 6. Subdivision B7 of this section,</u> or the school board may request a school board hearing by written notice to the opposing party and the division superintendent within 10 <u>business</u> days after the receipt by the party initiating such hearing of the findings of fact and recommendations made by the fact-finding panel and the transcript of the panel hearing. Such notice shall be provided upon a form to be prescribed by the Board of Education and shall specify each matter to be inquired into by the school board.</p>	<p>Editorial Revision to locate referenced citation (no substantive change)</p> <p>Exact language change From the <u>Code of Virginia</u> § 22.1-313, D.</p>

<p>8 VAC 20-90-70 C, 4 4. The teacher and the division superintendent may be represented by legal counsel and another representative. The hearing before the school board shall be private, unless the teacher requests a public hearing. The school board shall establish the rules for the conduct of any hearing before it. Such rules shall include the opportunity for the teacher and the division superintendent to make an opening statement and to present all material or relevant evidence, including the testimony of witnesses and the right of all parties to cross-examine the witnesses. Witnesses may be questioned by the school board. <u>The school board may hear a recommendation for dismissal and make a determination whether to make a recommendation to the Board of Education regarding the teacher’s license at the same hearing or hold a separate hearing for each action.</u></p>	<p>Exact language change From the <u>Code of Virginia</u> §22.1-311</p>
<p>8 VAC 20-90-70, D, 2 2. The school board may dismiss, suspend, or place on probation a teacher upon a majority vote of a quorum of the school board. In the event the school board's decision is at variance with the recommendations of the fact-finding panel, the school board's decision is at variance with the recommendation of the fact finding panel, <u>the school board's written decision shall include the rationale for the decision shall be required to conduct an additional hearing which shall be public unless the teacher requests a private one. However, if the fact-finding hearing was held in private, the additional hearing shall be held in private. The hearing shall be conducted by the school board pursuant to 8 VAC 20-90-60,C1&2, except that the grievant and the division superintendent shall be allowed to appear, to be represented, and to give testimony. However, the additional hearing shall not include examination and cross-examination of any other witnesses. The school board's written decision shall include the rationale for the decision.</u></p>	<p>Exact language change From the <u>Code of Virginia</u> §22.1-313</p>
<p>8VAC 20-90-90 Forms Forms have been modified to reflect :business days” requirements</p>	<p>Exact language change From the <u>Code of Virginia</u> § 22.1-312</p>