



townhall.virginia.gov

Fast-Track Regulation Agency Background Document

Agency name	Virginia Board of Education
Virginia Administrative Code (VAC) Chapter citation(s)	8 VAC20-90
VAC Chapter title(s)	Procedure for Adjusting Grievances
Action title	Proposed Amendments to the Procedure for Dismissals to Comport with Legislation from the 2020 General Assembly
Date this document prepared	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. These regulatory changes are essential to protect the health, safety or welfare of citizens as § [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](#). The goals of the regulatory change, and the problem this regulatory change is intended to solve, is to comport with the legislative amendments to the Procedure for Dismissals from the 2020 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](#).

The substantive changes to existing sections include sections 8VAC20-90-10 (Definitions) and 8VAC20-90-70 (Procedure for dismissals). Changes to 8VAC20-90-10 include an update to the definition of “Grievance,” and the addition of a definition for “military status.”

The substantive changes to section 8VAC20-90-70 (Procedure for dismissals) will update subsection A. for clarity, and subsection B. and C. will be updated to comport with the legislative changes concerning “procedure for hearing” and “school board determination.”

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.

The primary advantage to the public, such as individual private citizens or businesses, of the amended provisions is that they effectuate changes made by the Virginia General Assembly. The primary advantages to the agency or the Commonwealth is that it effectuates changes made by the Virginia General Assembly.

Amending these provisions does not disadvantage the public, the agency, or the Commonwealth.

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.

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.

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

<i>For your agency:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including: a) fund source / fund detail; b) delineation of one-time versus on-going expenditures; and c) whether any costs or revenue loss can be absorbed within existing resources	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.
<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.	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.
<i>For all agencies:</i> Benefits the regulatory change is designed to produce.	The regulatory change aligns state regulation to Virginia law.

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.

Projected costs, savings, fees or revenues resulting from the regulatory change.	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.
Benefits the regulatory change is designed to produce.	The regulatory change aligns state regulation to Virginia law.

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.

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.	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.
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: a) is independently owned and operated and; b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.	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.
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: a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change; c) fees; d) purchases of equipment or services; and e) time required to comply with the requirements.	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.
Benefits the regulatory change is designed to produce.	The regulatory change aligns state regulation to Virginia law.

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. 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		8VAC20-90-10. Definitions.	Change: Amend the definition of "Grievance" to include the following:

		<p>The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise.</p> <p>...</p> <p>"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 against a teacher for filing or processing a grievance, or participating as a witness in any step, meeting, or hearing related to a grievance; or complaints 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. The term "grievance" shall not include a complaint or dispute by a teacher relating to the establishment and revision of wages or salaries, position classifications or general benefits; suspension of a teacher or nonrenewal of the contract of a teacher who has not achieved continuing contract status; the establishment or contents of ordinances, statutes or personnel policies, procedures, rules and regulations; failure to promote; discharge, layoff, or suspension from duties because of decrease in enrollment, decrease in enrollment in or abolition of a particular subject, or</p>	<p>"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 <u>(i) disciplinary action including dismissal;</u> <u>(ii) the application or interpretation of (a) personnel policies, (b) procedures, (c) rules and regulations, (d) ordinances, and (e) statutes;</u> <u>(iii) acts of reprisal against a teacher for filing or processing a grievance, or participating as a witness in any step, meeting, or hearing related to a grievance, or serving as a member of a fact-finding panel;</u> or and <u>(iv) complaints of discrimination on the basis of race, color, creed, religion, political affiliation, handicap, disability, age, national origin, or sex, pregnancy, childbirth or related medical conditions, marital status, sexual orientation, gender identity, or military status. Each school board shall have the exclusive right to manage the affairs and operations of the school division.</u> "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. The <u>Accordingly, the term "grievance" shall not include a complaint or dispute by a teacher relating to (i) the establishment and revision of wages or salaries, position classifications or general benefits; (ii) suspension of a teacher or nonrenewal of the contract of a teacher who has not achieved continuing contract status; (iii) the establishment or contents of ordinances, statutes or personnel policies, procedures, rules and regulations; (iv) failure to promote; (v) discharge, layoff, or suspension from duties because of decrease in enrollment, decrease in enrollment in or abolition of a particular subject, or insufficient funding; (vi) hiring, transfer, assignment and retention of teachers within the school division; (vii) suspension from duties in emergencies; (viii) the methods, means and personnel by which the school division's operations are to be carried on; or (ix) coaching or extracurricular activity sponsorship.</u> While these management rights are reserved to the school board, failure to apply, where applicable, these <u>the</u> rules,</p>
--	--	--	---

		<p>insufficient funding; hiring, transfer, assignment and retention of teachers within the school division; suspension from duties; the methods, means and personnel by which the school division's operations are to be carried on; or coaching or extracurricular activity sponsorship. 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.</p> <p>...</p>	<p>regulations, policies, or procedures as written or established by the school board is grievable.</p> <p>Add the following defined term: <u>"Military status" means status (i) as a member of the uniformed forces, as defined in 10 USC § 101(a)(5), of the United States or a reserve component thereof named under 10 USC § 10101, (ii) a veteran as defined in 38 USC § 101(2), or (iii) a dependent as defined in 50 USC § 3911(4), except that the support provided by the service member to the individual shall have been provided 180 days immediately preceding an alleged action that, if proven true, would constitute unlawful discrimination under this section instead of 180 days immediately preceding an application for relief under 50 USC Chapter 50.</u></p> <p>Intent: The proposed regulatory change aligns the definition of “grievance” with the definition in § 22.1-306 of the Code of Virginia. The proposed regulatory change adds a definition of “military status” that matches the definition in § 22.1-306 of the Code of Virginia.</p> <p>Rationale: The rationale of these amendments is to match the definitions found in the Code of Virginia.</p> <p>Likely Impact: The regulatory change will conform the regulations to the Code of Virginia and update regulations for clarity and readability.</p>
<p>8VAC20-90-70</p>		<p>8VAC20-90-70. Procedure for dismissals. A. Notice to teacher of recommendation for dismissal. 1. In the event a division superintendent determines to recommend dismissal of any teacher, written notice shall be sent to the teacher on forms prescribed by the Board of Education notifying him of the proposed dismissal and informing the teacher that within 10</p>	<p>Change: Amend section 8VAC20-90-70 to include: A. Notice to teacher of recommendation for dismissal. 1. In the event a division superintendent determines to recommend dismissal of any teacher, written notice shall be sent to the teacher on forms prescribed by the Board of Education notifying him <u>the teacher</u> of the proposed dismissal and informing the teacher that within 10 business days after receiving the notice, the teacher may request a hearing before the school board or, at the option of the school board, a hearing officer</p>

	<p>business days after receiving the notice, the teacher may request a hearing before the school board or, at the option of the school board, a hearing officer appointed by the school board, as provided in § 22.1-311 of the Code of Virginia.</p> <p>2. During such 10-business-day period and thereafter until a hearing is held in accordance with the provisions herein, if one is requested by the teacher, the merits of the recommendation of the division superintendent shall not be considered, discussed, or acted upon by the school board except as provided for herein.</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 of the Code of Virginia, 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. 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. The division superintendent and the teacher or his representative shall be under a continuing</p>	<p>appointed by the school board, as provided in § 22.1-311 of the Code of Virginia.</p> <p>2. During such 10-business-day period and thereafter until a hearing is held in accordance with the provisions herein <u>of this subsection</u>, 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 <u>in this subsection</u>.</p> <p>3. At the request of the teacher, the <u>division</u> 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 Code of Virginia, 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. 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. 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 such documents shall be paid by the requesting party.</p> <p>4. 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.</p> <p>B. Procedure for hearing.</p> <p>1. The <u>Upon a timely request for a hearing shall be conducted by the pursuant to subsection A of this section,</u> the school board or, at the school board's <u>school board's</u> option of the school board, a</p>
--	---	---

	<p>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 such documents shall be paid by the requesting party.</p> <p>4. 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.</p> <p>B. Procedure for 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>2. The parties shall produce such additional evidence as the school board or hearing officer may deem necessary to an understanding and determination of the dispute.</p>	<p>hearing officer appointed by the school board <u>or a three-member fact-finding panel shall set a hearing and the teacher shall be given at least a 10-day written notice of the time and the place.</u> 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 <u>public</u> the hearing to be public. At the <u>hearing, the teacher may appear with or without a representative and be heard, presenting testimony of witnesses and other evidence.</u> 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>2. The parties shall produce such additional evidence as the school board or hearing officer may deem necessary to an understanding and determination of the dispute. The school board or hearing officer shall determine the relevancy and materiality of the evidence offered. All evidence shall be taken in the presence of the school board or hearing officer and of the parties.</p> <p>3. Exhibits offered by the teacher or the division superintendent may be received in evidence by the school board or hearing officer and, when so received, shall be marked and made a part of the record.</p> <p>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.</p>
--	---	--

		<p>The school board or hearing officer shall determine the relevancy and materiality of the evidence offered. All evidence shall be taken in the presence of the school board or hearing officer and of the parties.</p> <p>3. Exhibits offered by the teacher or the division superintendent may be received in evidence by the school board or hearing officer and, when so received, shall be marked and made a part of the record.</p> <p>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.</p> <p>5. The teacher shall bear his own expenses. The school board shall bear the expenses of the division superintendent and the hearing officer.</p> <p>6. 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>7. 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. Upon the hearing</p>	<p>5. The teacher shall bear his own expenses. The school board shall bear the expenses of the division superintendent and the hearing officer.</p> <p>6. 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>7. 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. Upon the hearing officer's own motion or upon application by the teacher or the division superintendent, the hearing officer may reopen the hearing for the purpose of hearing after-discovered evidence upon a finding of good cause by the hearing officer at any time before his recommendation is due. 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.</p> <p>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.</p> <p><u>2. Each school board may appoint an impartial hearing officer from outside the school division to conduct hearings pursuant to this section. A hearing officer shall not have been involved in the recommendation of dismissal as a witness or a representative. A hearing officer shall possess some knowledge and expertise in public education and education law and be capable of</u></p>
--	--	--	--

		<p>officer's own motion or upon application by the teacher or the division superintendent, the hearing officer may reopen the hearing for the purpose of hearing after-discovered evidence upon a finding of good cause by the hearing officer at any time before his recommendation is due. 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.</p> <p>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.</p> <p>C. School board determination.</p> <p>1. 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</p>	<p><u>presiding over an administrative hearing. The hearing officer shall schedule and preside over such hearings and shall create a record or recording of such proceedings. The hearing officer shall make a written recommendation to the school board, a copy of which shall be provided to the teacher. The hearing officer shall transmit the recommendation and the record or recording of the hearing to the school board as soon as practicable and no more than 10 business days after the hearing. In the event of a hearing before a hearing officer, the school board may make its decision upon the record or recording of such hearing, pursuant to subsection C of this section, 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 division superintendent within 10 business days after the board receives the record or recording of the initial hearing. Such notice shall also specify each matter to be inquired into by the school board.</u></p> <p><u>3. Each school board may elect for a three-member fact-finding panel to conduct hearings pursuant to this section. The teacher and the division superintendent shall each select one panel member, and the two panel members so selected shall select an impartial hearing officer to serve as the chairman of the panel. The fact-finding panel shall schedule and preside over such hearings and shall create a record or recording of such proceedings. The fact-finding panel shall make a written recommendation to the school board, a copy of which shall be provided to the teacher. The fact-finding panel shall transmit the recommendation and the record or recording of the hearing to the school board as soon as practicable but in no case more than 10 business days after the hearing. In the event of a hearing before a fact-finding panel, the school board may make its decision upon the record or recording of such hearing, pursuant to subsection C of this section, or the school board may elect to conduct a further hearing to receive additional evidence by giving written</u></p>
--	--	--	--

	<p>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 subdivision B 8 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>4. The school board may dismiss or suspend a teacher upon a majority vote of a quorum of the school board. 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</p>	<p><u>notice of the time and place of the hearing to the teacher and the division superintendent within 10 business days after the board receives the record or recording of the initial hearing. Such notice shall also specify each matter to be inquired into by the school board.</u></p> <p><u>4. A record or recording of any hearing conducted pursuant to this section shall be made. The parties shall share the cost of the recording equally. In proceedings concerning grievances not related to dismissal, the recording may be dispensed with entirely by mutual consent of the parties. In such proceedings, if the recording is not dispensed with, the two parties shall share the cost of the recording equally; if either party requests a transcript, that party shall bear the expense of its preparation. In cases of dismissal, the record or recording shall be preserved for a period of six months. If the school board requests that a transcript 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 cost of the transcription.</u></p> <p><u>5. 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>6. The school board, hearing officer, or three-member fact-finding panel, 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.</u></p> <p><u>7. The parties shall produce such additional evidence as the school board, hearing officer, or three-member fact-finding panel may deem necessary to an understanding and determination of the dispute. The school board, hearing officer, or three-member fact-finding panel shall determine the relevancy and</u></p>
--	--	---

		<p>session of the school board that 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>	<p><u>materiality of the evidence offered. All evidence shall be taken in the presence of the school board, hearing officer, or three-member fact-finding panel and of the parties.</u></p> <p><u>8. Exhibits offered by the teacher or the division superintendent may be received in evidence by the school board or hearing officer and, when so received, shall be marked and made a part of the record.</u></p> <p>C. School board determination.</p> <p>1. <u>The school board shall retain exclusive and final authority over matters concerning employment and supervision of its personnel, including dismissals and suspensions.</u></p> <p><u>2.</u> 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 but in no case 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- 3. <u>3.</u> In the event of a hearing before a hearing officer followed by a further hearing by the school board pursuant to subdivision B 8 of this section <u>appointed by the school board or a three-member fact-finding panel</u>, the school board shall give the teacher its written decision as soon as practicable and but in no case more than 30 days after such further receiving the record or recording of the hearing; however, should there be a further hearing before the school board, <u>such decision shall be furnished the teacher as soon as practicable but in no case more than 30 days after such hearing.</u> 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 or three-member fact-finding panel, and the evidence and information presented at the further hearing before the school board.</p> <p>3. <u>3.</u> 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</p>
--	--	--	---

			<p>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>4. The school board may dismiss or suspend a teacher upon a majority vote of a quorum of the school board.</p> <p><u>5.</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 Code of Virginia, the superintendent shall be excluded from any executive session of the school board that 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> <p><u>6. In those instances when licensed personnel are dismissed or resign due to a conviction of any felony, any offense involving the sexual molestation, physical or sexual abuse, or rape of a child, any offense involving drugs, or due to having become the subject of a founded case of child abuse or neglect, the local school board shall notify the Board of Education within 10 business days of such dismissal or the acceptance of such resignation.</u></p> <p>Intent: The proposed changes reflect the new amended provisions of §§ 22.1-309 and 22.1-311 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 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</p>
--	--	--	--

			<p>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>Rationale: These and other changes are designed to align the regulatory text with §§ 22.1-309 and 22.1-311 of the Code of Virginia.</p> <p>Likely impact of new requirements: The regulatory change will conform the regulations to the Code of Virginia and update the regulations for clarity and readability.</p>
--	--	--	---