

SUPERINTENDENT'S REGULATION 5-6.3

PROCEDURE FOR ADJUSTING GRIEVANCES: CLASSIFIED EMPLOYEES

The School Board adopts the attached Procedure for Adjusting Grievances in accordance with state law for disputes regarding dismissal, suspension, or other disciplinary actions arising between the School Board and classified employees who have completed the probationary period set forth in Policy 5-5.2. Such procedure does not include a hearing before a fact-finding panel but is otherwise consistent with the State Board of Education's procedure for adjusting grievances.

Procedure for Adjusting Grievances for Classified Employees

Preamble

The School Board adopts the following procedure for adjusting grievances to provide, in accordance with the statutory mandate of § 22.1-79(6) of the Code of Virginia, a timely and fair method of resolving disputes arising between the School Board and eligible employees regarding dismissal, suspension, or other disciplinary actions.

Part I

Definitions

The following words and terms, when used in this Procedure, shall have the following meaning:

"Eligible Employee" means an employee who has completed the probationary period established in Policy 5-5.2, excluding the division superintendent, employees covered under Article 2 (principals and assistant principals) and Article 3 (teachers) of Chapter 15 of Title 22 of the Code of Virginia. Substitutes, consultants, individuals receiving remuneration for providing contracted services and part-time employees are not eligible to use this Procedure.

"Days" means calendar days unless a different meaning is clearly expressed in this procedure. Whenever any period of time fixed by this procedure shall expire on a Saturday, Sunday, or legal holiday, the period of time for taking action under this procedure shall be extended to the next day that is not a Saturday, Sunday, or legal holiday.

"Dismissal" means the termination of employment of any eligible employee after completion of the probationary period designated in Policy 5-5.2. Dismissal may be with or without cause.

"Grievance" means for the purpose of Part II, a dispute between an eligible employee and the School Board regarding such employee's suspension or other disciplinary action excluding dismissal and disciplinary probation. For the purpose of Part III, grievance means a dispute between an eligible employee and the School Board regarding such employee's dismissal or probation. Grievances must be initiated in writing and describe the event or action complained of, the date of the event or action, a concise description of the basis for the claim and the relief expected on the form provided by the School Board.

"Personnel File" means any and all memoranda, entries, or other documents included in the eligible employee's file as maintained in the School Board office or in any file regarding the eligible employee maintained within a school in which such employee serves.

"Disciplinary Probation" means a period not to exceed one year during which time it shall be the duty of the covered employee to remedy the conduct that gave rise to the probationary status.

"Shall file," "shall respond in writing" or "shall serve written notice" means the document is either hand delivered to the grievant or office of the proper School Board representative or that it is mailed by registered or certified mail, return receipt requested, and postmarked within the time limits prescribed by

this procedure. Such notice may be mailed to the last address provided by the grievant to the School Board. It is the duty of the grievant to notify the School Board in writing of any change of address.

Part II

Purpose

Part II provides a timely and fair method of resolving disputes concerning suspension and disciplinary action other than probation or dismissal. An equitable solution should be secured at the lowest level of administration. This Part shall not be construed as limiting the right of any eligible employee to discuss any matter of concern with any member of the school administration. Nor should this Part be construed to restrict any employee's right to seek, or the school administration's right to provide, informal review of complaints that are not included in the definition of grievance. Nothing in this procedure shall be interpreted to limit the School Board's exclusive final authority over the management and operation of the school division, nor confer any property right whatsoever.

Procedure

Management Steps:

Step 1-Immediate Supervisor. The first step shall be an informal conference between the eligible employee and his or her immediate supervisor. The employee shall state the nature of the grievance, and the immediate supervisor shall attempt to adjust the grievance. This step may not be waived.

Step 2-Principal. If the grievance is not resolved in Step 1, the grievant may proceed to Step 2. At this step, the grievant must file a Form A with the principal within fifteen days following the event giving rise to the grievance or within fifteen days following the time when the employee knew or reasonably should have known of its occurrence. Regardless of the outcome of Step 1, if a written Form A is not filed within the specified time, without just cause, the grievance shall be concluded. The Form A shall be provided by the School Board.

A meeting shall be held between the principal and the grievant within five days of the receipt of the grievance (Form A) by the principal. The principal shall set the time and place of the meeting. Both the grievant and the principal have the right to present appropriate witnesses and to be represented by legal counsel or another representative. The principal shall respond in writing (on the Form A) to the grievant within five (5) business days following the meeting.

The principal may forward to the grievant, within five work days from the receipt of the written grievance, a written request for more specific information regarding the grievance. The grievant shall file an answer thereto within 10 business days of receipt of the request, and the meeting must be held within five (5) days after the answer is filed or due to be filed, whichever is earlier.

Step 3-Superintendent. If the grievance is not resolved to the grievant's satisfaction, the grievant may proceed to Step 3 by checking the appropriate box on the Form A and filing it with the division superintendent within five (5) business days after receipt of the Step 2 answer (or the due date of such answer). A meeting shall be held between the division superintendent and the grievant at a mutually agreeable time within five (5) business days of the division superintendent's receipt of the grievance. Failure of the grievant to agree upon a meeting time shall result in the conclusion of the grievance. At such meeting, both the division superintendent and the grievant are entitled to present witnesses and to be represented by legal counsel or another representative. A representative may examine, cross examine, question, and present evidence on behalf of the grievant or the division superintendent without violating § 54-44 of the Code of Virginia. If the grievant's representative is an attorney, the grievant must give advance notice to the division superintendent and agree to a meeting date when the School Board attorney can attend. The division superintendent shall determine the propriety of attendance at the meeting of persons not having a direct interest in the grievance.

The division superintendent shall respond in writing (on the Form A) within five business days following the meeting. The division superintendent may request more information from the grievant if such was not requested in Step 2. The grievant shall respond to such request within 10 business days of receipt, and the meeting shall be held within five days of the date on which the answer was received by the division superintendent or due to the division superintendent. The grievant shall bear his or her own expenses. The School Board shall bear the expenses of the division superintendent. Witnesses who are employees of the School Board shall be granted time to appear at the meeting if the meeting is held during their working hours.

Step 4-School Board. If the grievance is not resolved to the satisfaction of the grievant, he or she may advance the grievance to the School Board by checking the appropriate box on the Form A and filing it with the division superintendent within five (5) business days after the decision of the division superintendent or the due date thereof. The division superintendent shall forward the grievance record to the School Board within five (5) business days of receipt of the Form A. The School Board may, at its option, hold a hearing or may make a decision based on the grievance record and written evidence presented by the grievant within 30 days of the hearing or if no hearing is held, within thirty days of receipt of the grievance record.

The School Board may affirm, modify or reverse the decision of the administration by a majority vote of a quorum of the School Board. The decision of the School Board is final.

Part III

Purpose

Part III provides a timely and fair method of resolving disputes regarding dismissal or placing on disciplinary probation. An equitable solution should be secured at the lowest level of administration. This Part shall not be construed as limiting the right of any eligible employee to discuss any matter of concern with any member of the school administration. Nor should this Part be construed to restrict any employee's right to seek, or the school administration's right to provide, informal review of complaints that are not included in the definition of grievance. Nothing in this procedure shall be interpreted to limit the School Board's exclusive final authority over the management and operation of the school division, nor confer any property right whatsoever.

Notice of Dismissal or Placing on Probation

Notice. In the event a division superintendent or designee decides to dismiss or place on probation an eligible employee, written notice shall be given to the employee on a form provided by the School Board notifying the eligible employee of the dismissal or probation and informing the eligible employee that within fifteen days of receiving the notice, the eligible employee may request a meeting before the division superintendent.

Preliminary Information Gathering. During the time between notice and the Step 1 meeting, the merits of the dismissal or probationary action shall not be considered, discussed or acted upon by the School Board. At the request of the eligible employee, the division superintendent shall provide the reasons for the dismissal or probation action in writing, or if the eligible employee prefers, in a personal interview. Such request must be made prior to the Step 1 meeting with the division superintendent and responded to within three days of the employee's request. At the request of the employee, the division superintendent shall provide the employee or his/her representative with the opportunity to inspect and copy his/her personnel file and all other documents relied upon by the division superintendent, and the employee shall provide the division superintendent the opportunity to inspect and copy the documents to be offered in rebuttal to the division superintendent's decision. The division superintendent and the employee or his/her representative shall be under a continuing duty to disclose and produce any additional documents identified later that may be used in the respective party's case-in-chief. The cost of copying shall be paid by the requesting party.

Procedure

Management Steps

Steps 1-Superintendent. Within 15 business days of receiving notice of dismissal or probation, the employee may initiate a grievance submitting Form C to the division superintendent. A meeting shall be held within five business days of the division superintendent's receipt of the Form C at a time and place designated by the division superintendent. Each party may be represented by an attorney or other representative and will have the opportunity to present witnesses and documents. The meeting shall be closed to all other persons. The division superintendent shall provide a written response on the Form C within five business days of the conclusion of the meeting. This step may be waived at the option of the employee.

Step 2-School Board. If the grievance is not resolved at Step 1, an eligible employee may proceed to Step 2 by filing Form C with the division superintendent within 15 days from the receipt of notice from the division superintendent or within five business days after the conclusion of Step 1. The Form C shall be provided by the School Board and shall specify each matter to be addressed by the School Board.

The hearing before the School Board shall be scheduled and conducted within 30 days of the receipt of the grievant's Form C. The grievant shall be given at least 15 days' written notice of the date, place and time of the hearing and such notice shall also be provided to the division superintendent.

The grievant and the division superintendent may be represented by legal counsel or another representative. The hearing before the School Board shall be private, unless the grievant requests a public hearing. The School Board shall establish the rules for the conduct of the hearing. Such rules shall include the opportunity for the grievant/representative and the division superintendent/representative to make opening and closing statements 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 also be questioned by the School Board. Formal rules of evidence shall not apply.

A recording of the hearing shall be made and preserved for six months. If either the grievant or the School Board requests a transcript of the recording prior to the expiration of the six month period, it shall be made and copies furnished to both parties. The School Board shall bear the expense of the recording and the transcription.

The School Board shall provide the grievant a written decision within 30 days after the completion of the hearing. The decision shall be based on the grievance record and the information presented at the hearing, if any. All non-School Board members shall be excluded from any closed meeting of the School Board which has as its purpose reaching a decision on the grievance. Immediately after a decision is made and publicly announced, the School Board's attorney and the division superintendent may join the School Board in closed meeting to assist in writing the decision, if their presence is necessary.

The School Board may affirm, modify or reverse the decision of the administration by a majority vote of a quorum of the School Board. The decision of the School Board is final.

Part IV General Provisions

Determination of Grievability

Initial Determination-School Board. 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 after allowing the division superintendent and the grievant an opportunity to present written or oral arguments regarding grievability. The decision as to whether the arguments shall be written or oral shall be made by the School Board. A decision regarding grievability shall be made within ten days of such a request. The determination shall be made after the grievance is reduced to writing and prior to any School Board hearing or the right to such determination is waived. Failure of the School Board to make a timely

determination shall entitle the grievant to advance to the next step of the procedure as if the matter were grievable.

Final Determination-Circuit Court. Grievability decisions of the School Board may be appealed to the circuit court having jurisdiction in the school division. The grievant must file a written notice of appeal with the School Board within ten days after receipt of the School Board's determination and give a copy to all other parties. Within ten days of receipt of the notice, the School Board shall transmit to the clerk of the court to which the appeal is taken a copy of the notice of the appeal and the grievance record. The court, on motion of the grievant, may issue a writ of certiorari requiring the School Board to transmit the record.

Within ten days of receipt by the clerk of the notice of appeal and the record, the court, sitting without a jury, shall hear the appeal on the record and such additional evidence as may be necessary to resolve any controversy as to the correctness of the record or other evidence the court determines is required by the ends of justice. The court's decision shall be rendered not later than fifteen days after the conclusion of the hearing, if any, or review of the record. The court may affirm, reverse or modify the decision of the School Board.

Compliance with Procedural Requirements

The right of any party to proceed at any step of this procedure shall be conditioned upon compliance with the requirements set forth in this procedure.

The failure of the grievant to comply with all substantial procedural requirements shall forfeit the grievant's right to proceed with the grievance unless just cause for the failure can be shown. The failure of the School Board or any management step employee to comply with all substantial procedural requirements without just cause shall entitle the grievant to advance the grievance to the next step or at the final step to a decision in the grievant's favor.

The determination as to whether the substantial procedural requirements of this procedure have been satisfied shall be made by the School Board. In any case in which there is a factual dispute as to whether the procedural requirements have been met or just cause has been shown, the School Board shall have the option of allowing the grievant to proceed to the next step. The fact that the grievance is allowed to proceed in such case shall not prevent any party from raising such failure to observe the substantial procedural requirements at any further step in this procedure.

Separability

If any portion of this part of the procedure, or the application thereof, is held invalid by a court of competent jurisdiction, the remainder of this procedure and the application thereof in all other circumstances where not expressly held invalid shall not be affected.