

HUMAN RESOURCES

Procedures For Adjusting Grievances For Certificated Employees

Preamble

In accordance with the Standards of Quality for school divisions and the statutory mandate of Chapters 13.1 and 15, Article 3, Title 22.1, of the Code of Virginia, the Prince William County School Board adopts the Procedure for Adjusting Grievances for Certificated Employees as outlined in this regulation, in order to provide an orderly procedure for resolving disputes concerning application of this School Board's policies, rules, and regulations as they affect the work of employees within the scope of this regulation and disciplinary actions which include dismissal or probation.

PART I

Definitions

The following words and terms, when used in these regulations, shall have the following meaning, unless the context clearly indicates otherwise:

"Days" means calendar days unless a different meaning is clearly expressed in this procedure. For the purposes of this section, "business day" means any day that the relevant School Board office is open. 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 if it is not a Saturday, Sunday, or legal holiday.

"Dismissal" means the dismissal of any teacher within the term of such teacher's contract and the nonrenewal of a contract of a teacher on a continuing contract.

"Grievance" means, for the purpose of Part II, a complaint or a dispute by a teacher relating to his or her employment, including but not necessarily limited to disciplinary actions other than dismissal or placing on probation; the application or interpretation of personnel policies, procedures, rules and regulations, ordinances, and statutes; acts of reprisal against a teacher for filing or processing a grievance, participating as a witness in any step, meeting or hearing relating to a grievance, or serving as a member of a fact-finding panel; and acts of reprisal as a result of discrimination on the basis of race, color, creed, political affiliation, handicap, age, national origin, or sex. 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, revision, 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 or abolition of a particular subject or insufficient funding; hiring, transfer, assignment, and retention of teachers within the school division; suspension from duties in emergencies; or the methods, means, and personnel by which the school division's operations are to be carried on. 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.

"Grievance" means, for the purpose of Part III, a complaint or a dispute by a teacher relating to his or her employment involving dismissal or placing on probation. 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, revision, or contents of ordinances, statutes, or personnel policies, procedures, rules, and regulations; failure to promote or discharge, layoff, or suspension from duties because of decrease in enrollment, decrease in enrollment or abolition of a particular subject or insufficient funding; hiring, transfer, assignment, and retention of teachers within the school division; suspension from duties in emergencies; or the methods, means, and personnel by which the school division's operations are to be carried on. 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.

"Personnel file" means, for the purpose of Part III, any and all memoranda, entries, or other documents included in the teacher's file as maintained in the central school administration office or in any file on the teacher maintained within a school in which the teacher serves.

"Probation" means a period not to exceed one year during which time it shall be the duty of the teacher to remedy those deficiencies which gave rise to the probationary status.

"Teacher" or "teachers" means, for the purpose of Part II, all employees of the school division involved in classroom instruction and all other full-time employees of the school division except those employees classified as supervising employees. "Teacher" means, for the purpose of Part III, all regularly certified/licensed professional public school personnel employed under a written contract as provided by §22.1-302 of the Code of Virginia by any school division as a teacher or supervisor of classroom teachers, but excluding all Superintendents.

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

"Supervisory employee" means any person having authority in the interest of the Board (i) to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward, or discipline other employees; and (ii) to direct other employees; or (iii) to adjust the grievance of other employees; or (iv) to recommend any action set forth in (i), (ii), or (iii) above; provided that the authority to

act as set forth in (i), (ii), (iii), or (iv) requires the exercise of independent judgment and is not merely routine and clerical in nature.

"Written grievance appeal" means a written or typed statement describing the event of action complained of or the date of the event or action, and a concise description of those policies, procedures, regulations, ordinances or statutes upon which the teacher bases his or her claim. The grievant shall specify what he or she seeks through the use of the grievance procedure. A statement shall be written upon forms prescribed by the Board of Education and supplied by the local school board, as Attachments to this regulation.

PART II

Grievance Procedure

§2.1 Purpose Of Part II of this Grievance Procedure

The purpose of Part II of the Procedure for Adjusting Grievances is to provide an orderly procedure for resolving disputes concerning the application, interpretation, or violation of any of the provisions of School Board policies, procedures, rules, and regulations as they affect the work of teachers, other than dismissal or probation. An equitable solution of grievances should be secured at the most immediate administrative level. The procedure should not be construed as limiting the right of any teacher to discuss any matter of concern with any member of the school administration. Nor should the procedure be construed to restrict any teacher's right to seek, or the school division administration's right to provide, review of complaints that are not included within the definition of a grievance. Nothing in this procedure shall be interpreted to limit the School Board's exclusive final authority over the management and operation of the school division.

§2.2 Grievance Procedure

Recognizing that grievances should be begun and settled promptly, a grievance must be initiated within 15 business days following either the event giving rise to the grievance, or within 15 business days following the time when the employee knew or reasonably should have known of its occurrence. Grievances shall be processed as follows:

- A. **Step I - Informal.** The first step shall be an informal conference between the teacher and his or her immediate supervisor (which may be the principal). The teacher shall state the nature of the grievance, and the immediate supervisor shall attempt to adjust the grievance. It is mandatory that the teacher present the grievance informally prior to proceeding to Step 2.
- B. **Step 2 - Principal.** If for any reason the grievance is not resolved informally to the satisfaction of the teacher in Step 1, in order to perfect his or her grievance, the teacher shall file a written grievance appeal with his or her immediate supervisor, using Attachment I to this regulation, within 15 business days following the event

giving rise to the grievance, or within 15 business days following the time when the employee knew or reasonably should have known of its occurrence. The written grievance appeal shall specify the specific relief sought, and shall otherwise comply with the definition of a written grievance appeal set forth in Part I of this regulation. Regardless of the outcome of Step 1, if a written grievance is not, without just cause, filed within the specified item, the grievance will be barred.

A meeting shall be held between the principal (and/or his or her designee) and the teacher (and/or his or her designee) within five business days of the receipt by the principal of the written grievance appeal. At such meeting the teacher and/or other party involved shall be entitled to present appropriate witnesses and to be represented by a representative, other than an attorney. The principal (and/or his or her designee) shall respond in writing within five business days following such meeting, using Attachment II to this regulation.

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 thereto within 10 business days, and the meeting must then be held within five business days thereafter.

- C. **Step 3 – Superintendent’s Designee.** If the grievance is not settled to the teacher's satisfaction in Step 2, the teacher can proceed to Step 3 by filing a written notice of appeal with the Division Superintendent, through the Associate Superintendent for Human Resources, within five business days after receipt of the Step 2 answer (or the due date of such answer). The notice of appeal shall be filed on Attachment II to this regulation and accompanied by the original written grievance appeal (Attachment I). A meeting shall then be held between the Superintendent’s Designee and the teacher (and/or his or her designee) at a mutually agreeable time within five business days. At such meeting both the administration and the teacher shall be entitled to present witnesses and to be represented by a representative who may be an attorney. A representative may examine, cross-examine, question, and present evidence on behalf of a grievant or the administration without violating the provisions of § 54.1-3904 of the Code of Virginia. If no settlement can be reached in said meeting, the Superintendent’s Designee shall respond in writing within five business days following such meeting, using Attachment III to this regulation. Prior to the meeting provided for in this Step, the Associate Superintendent for Human Resources or the Superintendent’s Designee may make a written request for more specific information from the teacher, but only if such was not requested in Step 2. Such request shall be answered within 10 business days, and the meeting shall be held within five business days of the date on which the answer to the request for more information was received. If the grievance is not resolved to the satisfaction of the teacher in Step 3, the teacher may elect to have a hearing by a fact-finding panel, as provided in Step 4, or after giving proper notice may request a decision by the School Board pursuant to Step 5.

- D. **Step 4 - Fact-Finding Panel**. In the event the grievance is not settled upon completion of Step 3, either the teacher or the School Board may elect to have a hearing by a fact-finding panel prior to a decision by the School Board, as provided in Step 4. If the teacher elects to proceed to Step 4, he or she must notify the Division Superintendent, through the Associate Superintendent for Human Resources in writing of the intention to request a fact-finding panel, by filing with the Associate Superintendent for Human Resources Attachment IV to this regulation and a copy of the original written grievance appeal (Attachment I) within five business days after receipt of the Step 3 decision (or the due date of such decision). If the School Board elects to proceed to a fact-finding panel, the Division Superintendent, acting through the School Board attorney or the Associate Superintendent for Human Resources, must serve written notice of the Board's intention upon the grievant within 15 business days after the decision provided by Step 3.
1. **Panel**. Within five business days after the receipt by the Associate Superintendent for Human Resources of the request for a fact-finding panel, the teacher and the Superintendent, acting through the Associate Superintendent for Human Resources, shall each select one panel member from among the employees of the school division other than individuals involved in any previous phase of the grievance procedure as a supervisor, witness, or representative. The two panel members so selected shall within five business days of their selection select a third impartial panel member, who shall possess some knowledge and expertise in public education and education law and be capable of presiding over an administrative hearing. The third impartial panel member shall chair the panel. Panel members shall not be parties to or witnesses to the matter grieved.
 2. **Selection of Impartial Third Member**. In the event that both panel members are unable to agree upon a third panel member within five business days, both members of the panel shall request the chief judge of the circuit 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 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 business 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. With the agreement of the teacher's and 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.

3. **Holding of Hearing.** The hearing shall be held by the panel within 30 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. Such notice shall be served upon the Associate Superintendent for Human Resources. The teacher and the administration each may have present at the hearing and be represented at all stages by a representative or legal counsel.

4. **Procedure for Fact-Finding Panel**
 - a. The panel shall determine the propriety of attendance at the hearing of persons not having a direct interest in the hearing. However, at the request of the teacher, the hearing shall be private.

 - b. Prior to the hearing or at the beginning of the hearing, the panel may ask for written statements from the administration and the teacher clarifying the issues involved and, at the discretion of the panel, may allow closing statements.

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

 - d. The parties shall produce such additional evidence as the panel may deem necessary to an understanding and determination of the dispute. The panel shall 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.

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

 - f. The finding of facts and recommendations of 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. No panel member shall conduct an independent investigation involving the matter grieved.

 - g. On its own motion or upon application of the teacher or the administration, the hearing may be reopened by the panel, for good cause shown, to hear after-discovered evidence at any time before its final report is delivered.

- h. The panel shall make a written report which 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 business days after the completion of the hearing.
- i. A stenographic record or tape recording shall be taken of the proceedings. The recording may be dispensed with entirely by mutual consent of the parties. 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.

5. **Expenses**

- a. The teacher shall bear his or her 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.
- b. The parties shall set the per diem rate of the panel members and the third impartial member of the panel. If the parties are unable to agree on the per diem rate for the panel members or the third member of the panel, it shall be fixed by the chief judge of the circuit court. No employee of the school division shall receive such per diem for service on a panel during his or her normal working hours if he or she receives the normal salary for the period of such service.

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.

6. **Right to Further Hearings**

Following a hearing by a fact-finding panel, the teacher shall not have the right to a further hearing by the School Board as provided in subsection E (3) of this section. The School Board shall have the right to require a further hearing in any grievance proceeding as provided in subsection E (3) of this section.

E. **Step 5 - Decision by the School Board**

- 1. If a teacher elects to proceed directly to a determination before the School Board as provided for in Step 5, he or she must so notify the Division Superintendent, by filing with the Associate Superintendent for Human Resources written notice of his or her intent to appeal directly to the School Board, using Attachment IV to this regulation and stating therein, the nature of the grievance alleged and the relief sought, within five business days after receipt of the Step 3 decision or the

due date thereof. The teacher shall also attach to his or her notice of appeal, a copy of the original written grievance appeal (Attachment I). Upon receipt of such notice, the School Board may elect to have a Step 4 hearing before a fact-finding panel, as indicated in Section 2.1 (D) of this Part, by filing a written notice of such intention with the teacher within 10 business days of the deadline for the teacher's request for a determination by the School Board. Alternatively, the School Board may, in its discretion, base its decision solely upon the administrative record and any relevant evidence and arguments presented by the teacher and the administration, or hold a separate hearing.

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) of this regulation. 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 other relevant evidence as the School Board may receive at any further hearing which the School Board elects to conduct.
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.
 - 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 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, if available, and shall specify each matter to be inquired into by the School Board.
 - b. In any case where such further hearing is held by the School Board after a hearing before the fact-finding panel, the School Board shall consider at such further hearing the transcript, if any; the findings and recommendations of the fact-finding panel; and such other relevant evidence including, but not limited to, the testimony of those witnesses who have previously testified before the fact-finding panel, and any evidence relevant to the issues of the original grievance as the School Board deems appropriate or as may be offered on behalf of the grievant or the administration.
 - c. The further hearing before the School Board shall be set within 30 days of the initiation of such hearing, and the teacher must be given at least 15 days written notice of the date, place, and time of the hearing. The teacher and the Division Superintendent may be represented by legal counsel or 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, as set forth in Policy 131.01, School Board Hearing Procedure. Such rules shall include the opportunity for the teacher and the administration, or their representatives, to make an opening statement and to present all material or relevant evidence, including the testimony of witnesses and the right of all parties or their representatives to cross-examine the attending witnesses. Witnesses may also be questioned by members of the School Board and the School Board attorney.

- d. A stenographic record or tape recording of the proceedings shall be taken. However, the recording may be dispensed with entirely by mutual consent of the parties. If 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.
- e. The decision of the School Board shall be based solely on the transcript, if any; the findings of fact and recommendations of the fact-finding panel; and any evidence relevant to the issues of the original grievance produced at the School Board hearing in the presence of each party. The School Board shall give the grievant its written decision within 30 days after the completion of the hearing before 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 written decision shall include the rationale for the decision.

The School Board's attorney, assistants, or representative, if he, she, or they represented a participant in the prior proceedings, the grievant, the grievant's attorney, or representative and, notwithstanding the provision of § 22.1-69 of the Code of Virginia, the Division Superintendent, shall be excluded from any closed session of the School Board which has as its purpose reaching a decision on a grievance. However, immediately after a decision has been made and publicly announced, as in favor of or not in favor of the grievant, the School Board's attorney or representative and the Division Superintendent may join the School Board in closed session to assist in the writing of the decision.

4. In any case where a hearing before a fact-finding panel is not held, the Board may, at its discretion, hold a separate hearing or may make its determination solely on the basis of the written evidence presented by the teacher and the recommendation of the Division Superintendent.
5. The School Board shall retain its exclusive final authority over matters concerning employment and the supervision of its personnel.

§2.3 Grievability

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 the 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 business 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. The filing of a request for a grievability determination shall toll the time limitations of the other sections of this procedure, until such time as the School Board makes its grievability determination. Failure of the School Board to make such a determination within such a prescribed 10-day period shall entitle the grievant to advance to the next step as if the matter were grievable.

B. **Appeal of Determination on Grievability**

1. Decisions of the School Board may be appealed to the circuit court having jurisdiction in the school division for a hearing on the issue of grievability.
 - a. Proceedings for a review of the decision of the School Board shall be instituted by filing a notice of appeal with the Clerk to the School Board within 10 business days after the date of the decision and giving a copy thereof to all other parties.
 - b. Within 10 business 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.
 - c. Within 10 business 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 correctness of the record. The court, in its discretion, may receive such other evidence as the ends of justice require.
 - d. The court may affirm the decision of the School Board or may reverse or modify the decision. The decision of the court shall be rendered not later than the fifteenth day from the date of the conclusion of the court's hearing.

§2.4 Time Limitations

The right of any party to proceed at any step of this Part II grievance procedure shall be conditioned upon compliance with the time limitations and other requirements set forth in this procedure.

- A. The failure of the teacher to comply with all substantial procedural requirements, including initiation of the grievance and notice of appeal to the next step in the procedure, shall eliminate the teacher's right to any further proceedings on the grievance unless just cause for such failure can be shown.
- B. The failure of the School Board or any supervisory employee to comply with all substantial procedural requirements without just cause shall entitle the grievant, at his or her option, to advance to the next step in the procedure or, at the final step, to a decision in his or her favor.
- C. The determination as to whether the substantial procedural requirements of this Part II of the Procedure for Adjusting Grievances have been complied with 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 for failure to comply, the School Board shall have the option of allowing the grievant to proceed to its 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 as an affirmative defense at any further hearing involving the grievance.

§2.5 Separability

If any portion of this Part II of the Procedure for Adjusting Grievances, or the application thereof, shall be 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 thereby.

PART III

Procedure for Dismissals or Placing on Probation

This Part III of the Procedure for Adjusting Grievances adopted by the Board of Education in accordance with the statutory mandate of Article 3, Chapter 15, Title 22.1 of the Code of Virginia and the Standards of Quality for school divisions, Chapter 13.1 of Title 22.1 of the Code of Virginia, is to provide an orderly procedure for the expeditious resolution of disputes involving the dismissal or placing on probation of any teacher.

§3.1 Procedure for Dismissals or Placing on Probation

A. Notice to teacher of recommendation for dismissal or placing on probation

1. In the event the Division Superintendent determines to recommend dismissal of any teacher or the placing on probation of a teacher on continuing contract, written notice shall be sent to the teacher using Attachment V of this regulation notifying him or her of the proposed dismissal or placing on probation and informing the teacher that within 15 days after receiving the notice, the teacher may request a hearing before the School Board or before a fact-finding panel as hereinafter set forth.
2. During such 15-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.
3. At the request of the teacher, the Division Superintendent shall provide, through his or her Designee, 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 (fact-finding panel) or §22.1-312 (school board hearing) of the Code of Virginia, the Division Superintendent shall provide, through the Associate Superintendent for Human Resources, within 10 days of the request, the teacher or his or her representative with the opportunity to inspect and copy his or her 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, or his representative, the teacher or his or her representative shall provide the Division Superintendent or his or her representative with the opportunity to inspect and copy the documents to be offered in rebuttal to the decision to recommend dismissal or probation. The Division Superintendent and the teacher or his or her representative shall be under a continuing duty to disclose and produce any additional documents identified later which may be used in the respective parties' cases-in-chief. The cost of copying such documents shall be paid by the requesting party.

- B. Fact-Finding Panel.** Within 15 days after the teacher receives the notice referred to in §3.1 Subsection A.1., either the teacher or the School Board may elect to have a hearing before a fact-finding panel prior to any decision by the School Board. The teacher shall provide written notice of his or her intent to proceed before a fact-finding panel by filing Attachment VI to this regulation with the Associate Superintendent for Human Resources. The School Board, through its Chairman or the Board Attorney, shall also provide written notice to the teacher of its intent to elect a fact-finding hearing.

1. **Panel.** Within five business days after the receipt by the Associate Superintendent for Human Resources of the request for a fact-finding panel, the teacher and the Associate Superintendent for Human Resources shall each select one panel member from among the employees of the school division other than an individual involved in the recommendation of dismissal or placing on probation as a supervisor, witness, or representative. The two panel members so selected shall within five business days of their selection select a third impartial panel member. The third impartial panel member shall possess some knowledge and expertise in public education and education law, and shall be capable of presiding over an administrative hearing. Panel members shall not be parties to, or witnesses to the matter grieved.
2. **Selection of Impartial Third Member.** In the event that both panel members are unable to agree upon a third panel member within five business 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 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 business 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. With the agreement of the teacher's and 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.
3. **Holding of Hearing.** The hearing shall be held by the panel within 30 business 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 Superintendent and the teacher. The teacher and the Superintendent each may have present at the hearing and be represented at all stages by legal counsel or other representative.
4. **Procedure for Fact-Finding Panel**
 - a. The panel shall determine the propriety of attendance at the hearing of persons not having a direct interest in the hearing. However, at the request of the teacher, the hearing shall be private.

- b. The panel may ask for written submissions prior to the hearing or for oral statements from the administration and the teacher (or their representatives) at the beginning of the hearing, clarifying the issues involved, and at the discretion of the panel may allow closing statements.
- c. The parties shall then present their claims in evidence. Attending witnesses may be questioned by the panel members and by the teacher and the administration or their representatives. 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 of all attending witnesses.
- d. The parties shall produce such additional evidence as the panel may deem necessary to an understanding and determination of the dispute. The panel shall be the judge of relevancy and materiality of the evidence offered. All evidence shall be taken in the presence of the panel and of the parties.
- e. Exhibits offered by the teacher or the administration may be received in evidence by the panel and, when so received, shall be marked and made a part of the record.
- f. The findings of fact and recommendations 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.
- g. Upon its own motion or upon application of the teacher or the administration, the hearing may be reopened by the panel at any time before the panel's report is made for good cause shown to hear after-discovered evidence.
- h. The panel shall make a written report which 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 business days after the completion of the hearing.
- i. A stenographic record or tape recording of the proceedings shall be taken. In cases of dismissal 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.

5. **Expenses**

- a. The teacher shall bear his or her 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.
 - b. The parties shall set the per diem rate of the panel members and the third impartial panel member. If the parties are unable to agree on the per diem of the panel members or the third impartial member, it shall be fixed by the chief judge of the circuit court. No employee of the school division shall receive such per diem for service on a panel during his or her normal working hours if he or she receives his or her normal salary for the period of such service.
6. **Right to Further Hearing.** If the School Board elects to have a hearing by a fact-finding panel on the dismissal or placing on probation of a teacher, the teacher shall have the right to a further hearing by the school board as provided in subsection C of this section. The School Board shall have the right to require a further hearing as provided in subsection C of this Part also.
7. **Witnesses.** 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.

C. **Hearing by School Board**

1. After receipt of the notice of pending dismissal or placing on probation described in §3.1, Subsection A. 1., of Part III of this regulation, the teacher may request a hearing before the School Board by filing written notice of such request with the Associate Superintendent for Human Resources within 15 days from the receipt of notice from the Division Superintendent. Subsequent to the hearing by a fact-finding panel under §3.1 Subsection B. of this regulation, the teacher, only as permitted by §3.1 Subsection B.6., or the School Board may request a School Board hearing by written notice to the opposing party and the Associate Superintendent for Human Resources within 10 business 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 Attachment VI to this regulation, shall specify each matter to be inquired into by the School Board, and shall be accompanied by the original written grievance appeal (Attachment I).
2. In any case in which a further hearing is held by the School Board after a hearing before the fact-finding panel, the School Board shall consider at such further hearing the record, or transcript, if any, the findings of fact and recommendations made by the fact-finding panel and such further evidence, including, but not limited to, the testimony of those witnesses who have previously testified before

the fact-finding panel or other relevant evidence as the School Board deems appropriate or as may be offered on behalf of the teacher or the Division Superintendent.

3. The School Board hearing shall be set and conducted within 30 days of the receipt of the teacher's notice or the giving by the School Board of its notice. The teacher 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. In the event that a petition for revocation of the teacher's license has been initiated under the procedures established by the State Board of Education, the School Board, at its discretion, may hear a recommendation for dismissal and make a determination whether to make a recommendation to the State Board of Education regarding the teacher's license at the same hearing. Alternatively, the School Board may exercise its discretion to hold a separate action for each hearing. The teacher and the Division Superintendent or their representatives shall provide the Clerk of the School Board and each other with a position paper summarizing their respective position and copies of any documents to be considered by the School Board at least 10 days in advance of the meeting. Each side may also submit to the School Board and the other party any rebuttal documents responding to the other side's documents at least 5 days in advance of the meeting. The Clerk to the School Board shall be provided with ten copies of any position papers or other materials to be submitted to the School Board. Alternatively, within the same time limits and by prearrangement with the Clerk, electronic versions of such materials in PDF format may be filed with the Clerk to the School Board.
4. The teacher and the Division Superintendent may be represented by legal counsel or other 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, as set forth in Policy 131.01, School Board Hearing Procedure. Such rules shall include the opportunity for the teacher and the Division Superintendent or their representatives 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 in attendance. Witnesses may be questioned by members of the School Board and/or its counsel.
5. 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 Board shall bear the expense of the recording and the transcription.
6. The decision by the School Board shall be based on the transcript, the findings of fact and recommendations made by the fact-finding panel, and any evidence relevant to the issues of the original grievance produced at the School Board

hearing in the presence of each party. The School Board may, at its discretion, continue the hearing from day-to-day, for purposes of receiving further evidence. The School Board shall give the teacher, or if represented by counsel, the teacher's attorney, its written decision within 30 days after the completion of the hearing before the School Board.

The School Board's attorney, assistants, or representative, if he, she, or they represented a participant in the prior proceedings, the grievant, the grievant's attorney, or representative and, notwithstanding the provisions of §22.1-69 of the Code of Virginia, the Division Superintendent shall be excluded from any closed session of the School Board which has as its purpose reaching a decision on a grievance.

However, immediately after a decision has been made and publicly announced, as in favor of or not in favor of the grievant, the School Board's attorney or representative and the Division Superintendent may join the School Board in closed session to assist in the writing of the decision.

D. School Board Determination Where No School Board Hearing Is Requested

1. In any case in which a hearing is held before a fact-finding panel but no further hearing before the School Board is requested by either party, the School Board shall give the teacher its written decision within 30 days after the School Board receives both the transcript of such hearing and the panel's findings of fact and recommendations. The decision of the School Board shall be reached after considering the transcript, the findings of fact, and the recommendations made by the panel.
2. The School Board may dismiss, suspend, or place a teacher on probation 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 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 Section 3.1.C.1&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.

§3.2 Time Limitations

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

- A. The failure of the grievant to comply with all substantial procedural requirements shall terminate the teacher's right to any further proceedings on the grievance unless just cause for such failure can be shown.
- B. The failure of the School Board or of any supervisory employee to comply with all substantial procedural requirements without just cause shall entitle the grievant, at his or her option, to advance to the next step in the procedure or, at the final step, to a decision in his or her favor.
- C. The determination as to whether the substantial procedural requirements of this Part III of the Procedure for Adjusting Grievances have been complied with 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 for failure to comply, the School Board shall have the option of allowing the grievance to proceed to its 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 as an affirmative defense at any further hearing involving the grievance.

§3.3 Separability

If any portion of this Part III of the Procedure for Adjusting Grievances, or the application thereof, shall be 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 thereby.

The Associate Superintendent for Human Resources (or designee) is responsible for monitoring and implementing this regulation.

The Associate Superintendent for Human Resources is responsible for reviewing this regulation in 2011.

PRINCE WILLIAM COUNTY PUBLIC SCHOOLS

STATEMENT OF GRIEVANCE

PART II

STEP 2 - TO BE PRESENTED TO PRINCIPAL OR IMMEDIATE SUPERVISOR

Name of Grievant:	Date Filed:
School/Department of Assignment:	Subject Area or Grade:
Immediate Supervisor and/or Principal:	Grievant's Representative:
Policy, regulation, ordinance, statute being grieved, and date you knew or reasonably should have known of its occurrence:	
Statement of Grievance (Description of event or action complained of and date of such event or action):	
Specific Relief Requested:	
Grievant's Signature:	Representative's Signature:
Date:	Date:

PRINCE WILLIAM COUNTY PUBLIC SCHOOLS

DECISION OF PRINCIPAL OR IMMEDIATE SUPERVISOR

PART II

STEP 2 - DECISION TO BE PRESENTED TO GRIEVANT

Name of Grievant:	Date Grievance Received:
Decision of Principal, Immediate Supervisor or Designee:	
<input type="checkbox"/> I lack the authority to grant the relief requested.	
Signature of Principal, Immediate Supervisor or Designee:	Date:
Is the above decision acceptable to the grievant?	<u>Check One Box</u> <input type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> I hereby appeal this decision to Step 3, Superintendent's level.	
Grievant's Signature:	Date:

PRINCE WILLIAM COUNTY PUBLIC SCHOOLS

SUPERINTENDENT'S LEVEL

PART II

STEP 3 - DECISION TO BE PRESENTED TO GRIEVANT

Name of Grievant:	Date Appeal Received:
Decision of Superintendent or Designee:	
Signature of Superintendent or Designee:	Date:
Is the above decision acceptable to the grievant?	<u>Check One Box</u> <input type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> I hereby appeal this decision.	
Grievant's Signature:	Date:

PRINCE WILLIAM COUNTY PUBLIC SCHOOLS

REQUEST FOR HEARING

PART II
STEP 5 - TO BE SUBMITTED TO SUPERINTENDENT

Name of Grievant:	Date Grievance Filed:
<p>(Check One):</p> <p><input type="checkbox"/> I hereby petition that the attached grievance be submitted to an advisory fact-finding hearing.</p> <p style="text-align: right;">_____ Panel Designee</p> <p><input type="checkbox"/> I hereby waive my right to an advisory fact-finding hearing and petition that the following grievance be submitted to the School Board.</p>	
Grievant's Signature:	Representative's Signature:
Date:	Date:

PRINCE WILLIAM COUNTY PUBLIC SCHOOLS

PART III

NOTIFICATION: NOTICE OF PROPOSED DISMISSAL OR PROPOSED PLACING ON PROBATION

(Date)

(Name of Teacher)

(School/Department of Assignment)

(Check one)

- The Superintendent will recommend to the School Board that you be placed on probation for the period:

_____ to _____
(Date) (Date)

Reasons for this recommendation will be provided to you in writing or at your request in a personal interview as soon as practicable.

- The Superintendent will recommend to the School Board that you be dismissed from your position as:

(Position)

Reasons for this recommendation shall be provided to you in writing or at your request in a personal interview as soon as practicable.

You have 15 days from receipt of this form to request, in writing, a hearing before the School Board or an advisory fact-finding panel as provided in the procedure. Please advise the Associate Superintendent for Human Resources as soon as possible whether you wish to have such a hearing (see attached form). Enclosed, for your information, is Regulation 508.01-1, the procedure applicable to such hearings. Policy 131.01, School Board Hearing Procedure, is also applicable to Board Hearings.

(Signature of Division Superintendent)

PRINCE WILLIAM COUNTY PUBLIC SCHOOLS

REQUEST FOR HEARING

PART III
TO BE SUBMITTED TO ASSOCIATE SUPERINTENDENT FOR HUMAN
RESOURCES

Name of Teacher:	Superintendent's Proposed Action: <input type="checkbox"/> Dismissal <input type="checkbox"/> Probation
<p>(Check one)</p> <p><input type="checkbox"/> I hereby request that I be afforded an advisory fact-finding hearing on the above referenced matter.</p> <p style="text-align: right;">_____ Panel Designee</p> <p><input type="checkbox"/> I hereby waive my right to an advisory fact-finding hearing and request that I be afforded a Hearing before the School Board on the above referenced matter.</p>	
Teacher's Signature:	Representative's Signature:
Date:	Date: