

PROCEDURE FOR ADJUSTING GRIEVANCES FOR SUPPORT STAFF

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 or other disciplinary actions.

Part I-Definitions

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

“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.

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

“Dismissal” means the termination of employment of any eligible employee within the term of such employee’s contract or term of employment for disciplinary reasons.

“Eligible Employee” or “Employee” means an employee who has completed the probationary period established in policy GDG excluding the division superintendent and those employees covered under Article 2 (§ 22.1-293 et seq.) and Article 3 (§ 22.1-306 et seq.) of Chapter 15 of Title 22.1 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.

“Grievance” means for the purpose of Part II, a dispute between an eligible employee and the School Board regarding disciplinary action other than the dismissal or disciplinary probation of the employee. Employee evaluations are not “disciplinary actions.” 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 requested on the form provided by the School Board. The term “grievance” does not include a dispute relating to the establishment and revision of wages or salaries, position classifications or general benefits; suspension; the establishment or contents of personnel policies, procedures, rules and regulations; failure to promote; or discharge, layoff, or suspension from duties because of decrease in enrollment, decrease in enrollment in a particular subject, abolition of a particular subject, budget cuts or insufficient funding; hiring, transfer, assignment, and retention of employees 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 may be grievable.

“Personnel File” means any and all memoranda, entries, or other documents included in the eligible employee’s file as maintained in the central school administration office or in any file regarding the eligible employee maintained within a school in which such employee serves.

“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 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.

“Work Days” means days the School Board office is open.

Part II

Purpose

Part II provides a timely and fair method of resolving disputes concerning disciplinary actions other than probation or dismissal. An equitable solution should be secured at the most immediate 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 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 Form A is not filed within the specified time, without just cause, the grievance shall be concluded. Form A shall be provided by the School Board. The grievant must indicate the specific relief requested on Form A.

A meeting shall be held between the principal and the grievant within five work 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 a representative other than an attorney. The principal shall respond in writing (on Form A) to the grievant within five work days following the meeting.

The principal may forward to the grievant, within five days from the receipt of the written grievance, a written request for more specific information regarding the grievance. The grievant shall file an answer within 10 days of receipt of the request, and the meeting must be held within five 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 in Step 2, the grievant may proceed to Step 3 by so indicating on Form A and filing it with the superintendent within five work days after receipt of the Step 2 response (or the due date of such response). A meeting shall be held between the superintendent or his designee or both and the grievant at a mutually agreeable time within five work days of the 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 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 superintendent without violating § 54.1-3904 of the Code of Virginia. If the grievant's representative is an attorney, the grievant must give advanced notice to the superintendent and agree to a meeting date when the School Board attorney can attend. The superintendent shall determine the propriety of attendance at the meeting of persons not having a direct interest in the grievance. The superintendent shall respond in writing (on Form A) within five work days following the meeting.

The superintendent or designee may request more information from the grievant if such was not requested in Step 2. The grievant shall respond to such request within ten days of receipt, and the meeting shall be held within five days of the date on which the answer was received by the superintendent or due to the superintendent.

The grievant shall bear his or her own expenses. The School Board shall bear the expenses of the superintendent. Witnesses who are employees of the School Board shall be granted release 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 so indicating on Form A and filing it with the superintendent within five work days after the decision of the superintendent or the due date thereof. The superintendent shall forward the grievance record to the School Board within five work 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 and the superintendent. The School Board shall provide its written decision to the grievant within thirty days of the hearing or, if no hearing is held, within thirty days of receipt of the grievance record.

If the School Board holds a hearing, the grievant will bear his own expenses and the School Board will bear the expenses of the superintendent. Witnesses who are employees of the School Board will be granted release time if the hearing is held during their working hours. The hearing shall be held at the school in which most witnesses work, if feasible.

The hearing will be set within 30 days of the Board's decision to have a hearing, and the grievant must be given at least 15 days written notice of the date, place, and time of the hearing.

The grievant and the 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 any hearing. Such rules shall include the opportunity for the grievant and the 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 or their representatives to cross-examine the witnesses. Witnesses may be questioned by 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 closed session of the School Board which has as its purpose reaching a decision on the 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 closed session to assist in the writing of the decision.

A stenographic record or tape recording of the proceedings shall be taken unless the grievant and the School Board agree otherwise. If the recording is not dispensed with, the two parties shall share the cost of the recording equally, and if either party requests a transcript, that party shall bear the expense of its preparation.

The decision of the School Board shall be based solely on the transcript, if any; and any evidence relevant to the issues presented 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.

The School Board may affirm, modify, or reverse the decision of the Superintendent. 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 most immediate 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 the superintendent or designee decides to recommend the dismissal or placing on probation of an eligible employee, written notice shall be given to the employee on a form provided by the School Board (Form B) notifying the eligible employee of the

recommendation and informing the eligible employee that within fifteen days of receiving the notice, the eligible employee may request a meeting with the superintendent.

Preliminary Information Gathering. During the time between notice and the Step 1 meeting, the merits of the recommended action shall not be considered, discussed, or acted upon by the School Board. At the request of the eligible employee, the superintendent shall provide the reasons for the recommendation in writing, or if the eligible employee prefers, in a personal interview. At the request of the employee, the superintendent shall provide the employee or his representative with the opportunity to inspect and copy his personnel file and all other documents relied upon by the superintendent in reaching his decision, unless confidential by law. Within ten days of the request of the superintendent, the employee shall provide the superintendent the opportunity to inspect and copy the documents to be offered in rebuttal to the superintendent's decision. The superintendent and the employee 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 shall be paid by the requesting party.

Procedure

Step 1-Superintendent. Within fifteen days of receiving notice of the recommendation of dismissal or probation, the employee may initiate a grievance by submitting Form C to the superintendent. A meeting shall be held within five work days of the superintendent's receipt of the Form C at a time and place designated by the 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 superintendent shall provide a written response on Form C within five work days of the conclusion of the meeting. This step may be waived at the option of the employee.

Step 2-School Board. An eligible employee may initiate a grievance by filing Form C with the superintendent within fifteen days from the receipt of notice from the superintendent or within five days after the conclusion of Step 1. Form C shall be provided by the School Board. The employee shall specify each matter to be addressed by the School Board on Form C.

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

The grievant and the 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 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.

A record or 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 record or 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 thirty 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. 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 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 superintendent may join the School Board in closed session to assist in the writing of the decision.

The School Board may accept, reject, or modify the recommendation of the superintendent. The decision of the School Board is final.

Part IV

Determination of Grievability

Decisions regarding whether a matter is grievable shall be made by the School Board at the request of the superintendent or grievant. The School Board shall reach its decision after allowing the 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 at the discretion of 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.

Compliance with Procedural Requirements

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

The failure of the grievant to comply with all substantial procedural requirements shall eliminate 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 supervisory employee to comply with all substantial procedural requirements without just cause shall entitle the grievant, at his option, to advance the grievance to the next Step or at the final Step to a decision in his favor.

The determination as to whether the substantial procedural requirements of this Procedure have been followed 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 as an affirmative defense 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.