

PROFESSIONAL STAFF GRIEVANCES

The Dickenson County School Board adopts the most recent version of Procedure for Adjusting Grievances promulgated by the Virginia Board of Education based on current statutory provisions.

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Legal Refs.: Code of Virginia, 1950, as amended, §§ 22.1-253.13:7.C.8, and 22.1-306 et seq.

**Procedure for
Adjusting Grievances for Professional Staff**

8 VAC 20-90-10 et seq.

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Procedure for Adjusting Grievances for Professional Staff

PART I Definitions

8 VAC 20-90-10. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

“Business day” means, in accordance with §§ 22.1-312 of the Code of Virginia, any day that the relevant school board office is open.

“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 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 (8 VAC 20-90-20 et seq.), a complaint or a dispute by a teacher relating to his employment, including but not necessarily limited to the application or interpretation of personnel policies, rules and regulations, ordinances, and statutes; acts of reprisal as a result of discrimination on the basis of race, color, creed, political affiliation, handicap, age, national origin, or sex. “Grievance” means, for the purposes of Part III (8 VAC 20-90-60 et seq.), a complaint or a dispute involving a teacher relating to his 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 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 a particular subject, abolition of a particular subject, 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 purposes of Part III (8 VAC 20-90-60 et seq.), 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 regarding 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 give rise to the probationary status.

“Teacher” or “teachers” means, for the purpose of Part II (8 VAC 20-90-20 et seq.), 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 purposes of Part III (8 VAC 20-90-60 et seq.), all regularly certified 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,” “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 clause (i), (ii), or (iii) above; provided that the authority to act as set forth in clause (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 or 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 claim. The grievant shall specify what he expects to obtain through 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.

PART II Grievance Procedure

8 VAC 20-90-20. 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 local school board policies, rules, and regulations as they affect the work of teachers, other than dismissals 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 a school board’s exclusive final authority over the management and operation of the school division.

8 VAC 20-90-30. 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:

Step 1 - Informal. The first step shall be an informal conference between the teacher and his 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.

Step 2 - Principal. If for any reason the grievance is not resolved informally in Step 1 to the satisfaction of the teacher, the teacher must perfect his grievance by filing said grievance in writing 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, specifying on the form the specific relief expected. Regardless of the outcome of Step 1, if a written grievance is not, without just cause, filed within the specified time, the grievance will be barred.

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

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.

Step 3 - Superintendent. 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 superintendent, accompanied by the original grievance appeal form within five business days after receipt of the Step 2 answer (or the due date of such answer). A meeting shall then be held between the superintendent (or his designee or both) and the teacher (or his designee or both) at a mutually agreeable time within five business days. At such meeting both the superintendent and the teacher shall be entitled to present witnesses and to be accompanied 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 superintendent without violating the provisions of § 54.1-3904 of the Code of Virginia. If no settlement can be reached in said meeting, the superintendent (or his designee) shall respond in writing within five business days following such meeting. The superintendent or 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 was received. If the grievance is not resolved to the satisfaction of the teacher in Step 3, the teacher may request a decision by the school board.

Step 4- Decision by the school board.

a.) If a teacher elects to proceed to a determination before the school board, he must notify the superintendent in writing of the intention to appeal to the board, of the grievance alleged and the relief sought within five business days after receipt of the answer as required in Step 3 or the due date thereof.

b.) The school board shall retain its exclusive final authority over matters concerning employment and the supervision of its personnel.

8 VAC 20-90-40. 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 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 at 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. Failure of the school board to make such a determination within such a prescribed 10-business-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 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 may, on motion of the grievant, 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 the correctness of the record. The court may, in its discretion, 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 15 days from the date of the conclusion of the court's hearing.

8 VAC 20-90-50. 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 option, to advance to the next step in the procedure or, at the final step, to a decision in his 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.

PART III

Procedure for Dismissals or Placing on Probation and Time Limitations

8 VAC 20-90-60. Dispute resolution.

This Part III of the Procedure for Adjusting Grievances adopted by the Board of Education in accordance with the statutory mandate of Article 3, (§ 22.1-306 et seq.) Chapter 15 of Title 22.1 of the Code of Virginia and the Standards of Quality for school divisions, Chapter 13.1 (§22.1-253.13:1 et seq.) 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.

8 VAC 20-90-70. Procedure for dismissals or placing on probation.

- A. Notice to teacher of recommendation for dismissal or placing on probation.
1. In the event a 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 on forms to be prescribed by the Board of Education notifying him of the proposed dismissal, or placing on probation, and informing the teacher that within 10 business days after receiving the notice, the teacher may request a hearing before the school board, or at the option of the school board, a hearing officer appointed by the school board as provided in Va. Code Sec. 22.1-311.
 2. During such 5 business day period and thereafter until a hearing is held in accordance with the provisions herein, if one is requested by the teacher, the merits of the recommendation of the division superintendent shall not be considered, discussed, or acted upon by the school board except as provided for herein.
 3. At the request of the teacher, the superintendent shall provide the reasons for the recommendation in writing or, if the teacher prefers, in a personal interview. In the event a teacher requests a hearing pursuant to § 22.1-311 of the Code of Virginia, the division superintendent shall provide, within 10 days of the request, the teacher or his representative with the opportunity to inspect and copy his personnel file and all other documents relied upon in reaching the decision to recommend dismissal or probation. Within 10 days of the request of the division superintendent, the teacher, or his representative, shall provide the division superintendent with the opportunity to inspect and copy the documents to be offered in rebuttal to the decision to recommend dismissal or probation. The division superintendent and the teacher or his representative shall be under a continuing duty to disclose and produce any additional documents identified later that may be used in the respective parties' cases-in-chief. The cost of copying such documents shall be paid by the requesting party.
- B. Hearing before school board.or hearing officer
1. Upon a timely request for hearing pursuant to Va. Code Sec. 22.1-309, the school board, or at the option of the school board, a hearing officer appointed by the school board, shall set a hearing within 15 days of the request and the teacher shall be given at least 5 days written notice of the time and place of the hearing and such notice shall also be provided to the division superintendent.
 2. Each school board may appoint an impartial hearing officer from outside the school division to conduct hearings pursuant to this section. A hearing officer shall not have been involved in the recommendation of dismissal as a witness or a representative. A hearing officer shall

possess some knowledge and expertise in public education and education law and be capable of presiding over an administrative hearing. The hearing officer shall schedule and preside over such hearings and shall create a record or recording of such proceedings. The hearing officer shall make a written recommendation to the school board, a copy of which shall be provided to the teacher. The hearing officer shall transmit the recommendation and the record or recording of the hearing to the school board as soon as practicable and no more than 10 business days after the hearing. In the event of a hearing before a hearing officer, the school board may make its decision upon the record or recording of such hearing, pursuant to § [22.1-313](#), or the school board may elect to conduct a further hearing to receive additional evidence by giving written notice of the time and place to the teacher and the division superintendent within 10 business days after the board receives the record or recording of the initial hearing. Such notice shall also specify each matter to be inquired into by the school board.

3. The teacher and the division superintendent may be represented by legal counsel or other representatives. 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, and such rules shall include the opportunity for the teacher and the division superintendent to make an opening statement and to present all material or relevant evidence including the testimony of witnesses and the right of all parties to cross-examine the witnesses. Witnesses may be questioned by the school board. The school board may hear a recommendation for dismissal and make a determination whether to make a recommendation to the Board of Education regarding the teacher's license at the same hearing or hold a separate hearing for each action.
4. A record or recording of any hearing conducted pursuant to this section shall be made. The parties shall share the cost of the recording equally. In proceedings concerning grievances not related to dismissal, the recording may be dispensed with entirely by mutual consent of the parties. In such proceedings, if the recording is not dispensed with, the two parties shall share the cost of the recording equally; if either party requests a transcript, that party shall bear the expense of its preparation. In cases of dismissal, the record or recording shall be preserved for a period of six months. If the school board requests that a transcript be made at any time prior to expiration of the six-month period, it shall be made and copies shall be furnished to both parties. The school board shall bear the cost of the transcription.
5. In the case of a hearing before the school board, the school board shall give the teacher its written decision as soon as practicable and no more than 30 days after the hearing. In the case of a hearing before a hearing officer appointed by the school board, the school board shall give the teacher its written decision as soon as practicable and no more than 30

days after receiving the record or recording of the hearing; however, should there be a further hearing before the school board, such decision shall be furnished the teacher as soon as practicable and no more than 30 days after such further hearing.

6. The decision by the school board shall be based on the transcript, the findings of the fact, and any evidence relevant to the issues of the original grievance produced at the school board hearing in the presence of each party.
7. The school board's attorney, assistants, or representative, if he or they represented a participant in the prior proceedings, the grievant, the grievant's attorney, or representative and, notwithstanding the provisions of § 22.1-69 of the Code of Virginia, the superintendent shall be excluded from any executive session of the school board 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 executive session to assist in the writing of the decision.
8. In those instances when licensed personnel are dismissed or resign due to a conviction of any felony, any offense involving the sexual molestation, physical or sexual abuse or rape of a child, any offense involving drugs, or due to having become the subject of a founded case of child abuse or neglect, the local school board shall notify the Board of Education within 10 business days of such dismissal or the acceptance of such resignation.

C. School board determination.

The school board may dismiss or suspend a teacher upon a majority vote of a quorum of the school board.

8 VAC 20-90-80. 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 option, to advance to the next step in the procedure or, at the final step, to a decision in his 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.

Adopted: May 23, 2016

APPENDIX

FORMS FOR PART II OF THE PROCEDURE FOR ADJUSTING GRIEVANCES

Enclosed herein are the necessary forms for adjusting grievances in accordance with Part II of the Grievance Procedure.

The grievant is advised to become familiar with the procedure for adjusting grievances. Special emphasis should be given to the procedural steps.

Dickenson County Public Schools
STATEMENT OF GRIEVANCE

STEP 2 – TO BE PRESENTED TO PRINCIPAL

Name of grievant:

Date filed:

School/department of assignment

Subject area or grade

Immediate superior and/or principal

Grievant's representative

Policy, procedure, regulation, ordinance, statute being grieved, and date you knew of reasonably should have known of its occurrence:

Statement of grievance:

Specific relief requested:

Grievant's signature:

Representative's signature

Date:

Date:

Date: May 23, 2016

PRINCIPAL'S DECISION

STEP 2 – DECISION TO BE PRESENTED TO GRIEVANT

Name of grievant	Date grievance received
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Decision of principal or designee:

____ I lack the authority to grant the relief requested.

Signature of principal or designee	Date
Is the above decision acceptable to grievant?	<u>Check one box</u> <input type="checkbox"/> Yes <input type="checkbox"/> No

____ I hereby appeal this decision to Step 3, Superintendent's Level.

Grievant's signature	Date
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Date: May 23, 2016

SUPERINTENDENT'S LEVEL

STEP 3 – DECISION TO BE PRESENTED TO GRIEVANT

Name of grievant	Date appeal received
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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

_____ I hereby appeal this decision.

Grievant's signature	Date
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Date: May 23, 2016

REQUEST FOR HEARING

STEP 5 – DECISION TO BE PRESENTED TO GRIEVANT

Name of Grievant	Date grievance filed
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(Check one)

I hereby petition the attached grievance be submitted to the board for hearing.

Grievant's signature	Representative's signature
Date	Date

Date: May 23, 2016

**FORMS FOR PART III
OF THE PROCEDURE FOR
ADJUSTING GRIEVANCES**

FORMS FOR PROPOSED DISMISSAL/PROBATION

Enclosed herein are the necessary forms for proposed dismissal/probation proceeding as prescribed in Part III of the procedure.

DICKENSON COUNTY PUBLIC SCHOOLS

NOTIFICATION: NOTICE OF PROPOSED DISMISSAL OR PROPOSED PLACING ON PROBATION

Date

Name of teacher

School/department of assignment

(Check one)

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

_____ to _____
(date) (date)

At your request reasons for this recommendation will be provided to you in writing or in a personal interview.

_____ The Division Superintendent will recommend to the School Board that you be dismissed from your position as: _____
(position)

At your request reasons for this recommendation will be provided to you in writing or in a personal interview.

You have 5 business days after receiving this notice to request a hearing before the school board. Enclosed, for your information, is a copy of the procedure.

Signature of Superintendent

Date: May 23, 2016

REQUEST FOR HEARING

TO BE SUBMITTED TO SUPERINTENDENT

Name of Teacher:

Superintendent's proposed action
(Check one)

_____ Dismissal

_____ Probation

_____ I hereby petition the attached grievance be submitted to the board for hearing.

Teacher's signature	Representative's signature
Date	Date

Date: May 23, 2016