

PROCEDURE FOR ADJUSTING GRIEVANCES

The Portsmouth Public School Board ("School Board") adopts the Virginia Board of Education's Procedure for Adjusting Grievances to provide, 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, an orderly procedure for resolving disputes concerning application of local school board policies, rules, and regulations as they affect the work of employees, and disciplinary actions which include dismissal.

A. **Part I – Definitions.** The following words and terms when used in this policy shall have the following meanings unless the context clearly indicates otherwise.

"Business day" means any day that the School Board office is open.

"Days" means calendar days unless a different meaning is clearly expressed in this procedure. Whenever the last day for performing an act required by this procedure falls on a Saturday, Sunday, or legal holiday, the act may be performed on the next day that is not a Saturday, Sunday, or legal holiday.

"Dismissal" means the dismissal of any teacher within the term of such teacher's contract.

"Grievance" means, for the purpose of Part II (8VAC20-90-20 et seq.), a complaint or a dispute by a teacher relating to his employment, including but not necessarily limited to the application or interpretation of personnel policies, rules and regulations, ordinances, and statutes; acts of reprisal against a teacher for filing or processing a grievance, or participating as a witness in any step, meeting, or hearing related to a grievance; or complaints of discrimination on the basis of race, color, creed, political affiliation, handicap, age, national origin, or sex. "Grievance" means, for the purposes of Part III (8VAC20-90-60 et seq.), a complaint or a dispute involving a teacher relating to his employment involving dismissal. The term "grievance" shall not include a complaint or dispute by a teacher relating to the establishment and revision of wages or salaries, position classifications or general benefits; suspension of a teacher or nonrenewal of the contract of a teacher who has not achieved continuing contract status; the establishment or contents of ordinances, statutes or personnel policies, procedures, rules and regulations; failure to promote; discharge, layoff, or suspension from duties because of decrease in enrollment, decrease in enrollment in or abolition of a particular subject, or insufficient funding; hiring, transfer, assignment and retention of teachers within the school division; suspension from duties in emergencies; the methods, means and personnel by which the school division's operations are to be carried on; or coaching or extracurricular activity sponsorship. While these management rights are reserved to the School Board, failure to apply, where applicable, these rules, regulations, policies, or procedures as written or established by the School Board is grievable.

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"Hearing officer" means an impartial hearing officer from outside the school division who possesses some knowledge and expertise in public education and education law and who is capable of presiding over an administrative hearing.

"Personnel file" means, for the purposes of Part III (8VAC20-90-60 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.

"Teacher" or "teachers" means, for the purposes of Part II (8VAC20-90-20 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 (8VAC20-90-60 et seq.), all regularly licensed professional public school personnel employed by any school division under a written contract as provided by § 22.1-302 of the Code of Virginia as a teacher or as an assistant principal, principal, or supervisor as provided by § 22.1-294 of the Code of Virginia.

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

"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, the date of the event or action complained of, and a concise description of those policies, rules, regulations, 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 written grievance appeal shall be on forms prescribed by the Board of Education and supplied by the School Board.

B. Part II – Grievance Procedure.**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

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violation of any of the provisions of the School Board policies, rules and regulations as they affect the work of teachers, other than dismissals. 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. Grievance Procedure. Recognizing that grievances should begin and should be 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 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.

b. **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 a written grievance appeal on the required form 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 appeal 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.

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c. **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 written 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. The superintendent or designee may make a written request for more specific information from the teacher, but only if such information was not requested in Step 2. The teacher shall file an answer to such request within 10 business days, and the meeting shall be held within five business days of the date on which the answer was received. At such meeting both the superintendent, and/or his designee, and the teacher, and/or his representative, 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. 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 pursuant to Step 4. d.

d. **Step 4 - Decision by the School Board.**

- (i) If a teacher elects to request a decision by the School Board as provided for in Step 3, he must notify the superintendent in writing of the intention to make the request of the board within five business days after receipt of the answer as required in Step 3 or the due date thereof. Upon receipt of such notice, the board may hold a hearing on the grievance, may elect to have the hearing conducted by a hearing officer appointed by the School Board consistent with the procedures in § 22.1-311 of the Code of Virginia, or may make its determination on the basis of the written evidence presented by the teacher and the recommendation of the superintendent.
- (ii) In any case in which the School Board elects to hold a hearing or elects to have a hearing officer conduct the hearing, the hearing shall be set within 30 days of the School Board's receipt of the notice required by subsection d.(i) this section (Step 4d.(i)), and the teacher must be given at least 15 days' written notice of the date,

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time, and place of the hearing. The teacher and the division superintendent may be represented by legal counsel and another representative. The hearing shall be private, unless the teacher requests a public hearing. The School Board or the hearing officer, as the case may be, shall establish the rules for the conduct of the hearing. 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 or their representatives to cross-examine the witnesses. Witnesses may be questioned by the School Board or the hearing officer. In the case of a hearing conducted 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 executive session of the School Board that 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 executive session to assist in the writing of the decision. A stenographic record or tape recording of the hearing shall be taken. However, 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 the cost of the recording equally, and if either party requests a transcript, that party shall bear the expense of its preparation.

- (iii) In the event of a hearing conducted by a hearing officer, the recommendation of the hearing officer shall be based exclusively upon the evidence presented at the hearing. Upon the hearing officer's own motion or upon application by either party to the grievance, the hearing officer may reopen the hearing for the purpose of hearing after-discovered evidence upon a finding of good cause by the hearing officer at any time before his recommendation is due. The hearing officer shall transmit his written recommendation and a record or recording of the hearing to the School Board as soon as practicable and no more than 10 business days after the hearing.

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- (iv) In the event of a hearing by a hearing officer, the School Board may make its decision upon the record or recording of such hearing or the School Board may elect to conduct a further hearing to receive additional evidence. The School Board must hold such further hearing as soon as practicable and must give written notice of the time and place of such further hearing to the division superintendent and the teacher within 10 business days after the board received the record or recording of the initial hearing. The notice must specify each matter to be inquired into by the School Board. The School Board shall determine the procedure to be followed at such further hearing.
- (v) In the event of a hearing before the School Board, the School Board shall give the teacher its written decision as soon as practicable and no more than 30 days after the hearing. The decision of the School Board shall be reached after considering the evidence and information presented at the School Board hearing.
- (vi) In the event of a hearing before a hearing officer followed by a further hearing 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 such further hearing. The decision of the School Board shall be reached after considering the record or recording of the initial hearing, the recommendations of the hearing officer, and the evidence and information presented at the further hearing before the School Board.
- (vii) In the event of a hearing before a hearing officer in cases in which no further hearing is conducted by the School Board, the School Board shall give the teacher its written decision as soon as practicable and no more than 30 days after receiving the record or recording of the hearing. The decision of the School Board shall be reached after considering the record or recording of the hearing and the recommendations of the hearing officer.
- (viii) The School Board shall retain its exclusive final authority over matters concerning employment and the supervision of its personnel.

3. Grievability.

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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 administration or grievant and such decision shall be made within 10 business days of such request. The School Board shall reach its decision only after allowing the division administration 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. Such determination of grievability shall be made subsequent to the reduction of the grievance to writing but prior to any hearing by the board or a hearing officer, 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. 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.

- (i) 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.
- (ii) 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 records on or before a certain date.
- (iii) 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.
- (iv) 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.

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4. Time Limitations.

- a. 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.

- b. 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.

- c. 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.

- d. 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.

C. Part III – Procedure for Dismissals.

1. **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.) of 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 of any teacher.

2. Procedure for Dismissals.

- a. Notice to teacher of recommendation for dismissal.
 - (i) In the event a division superintendent determines to recommend dismissal of any teacher, written notice shall be sent to the teacher on forms prescribed by the Board of Education notifying him of the proposed dismissal and informing the teacher that within 10 business days after receiving the notice, the teacher may request a

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hearing before the School Board or, at the option of the School Board, a hearing officer appointed by the School Board, as provided in § 22.1-311 of the Code of Virginia.

- (ii) During such 10-business-day period and thereafter until a hearing is held in accordance with the provisions herein, if one is requested by the teacher, the merits of the recommendation of the division superintendent shall not be considered, discussed, or acted upon by the School Board except as provided for herein.
- (iii) 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. Within 10 days of the request of the division superintendent, the teacher, or his representative, shall provide the division superintendent with the opportunity to inspect and copy the documents to be offered in rebuttal to the decision to recommend dismissal. The division superintendent and the teacher or his representative shall be under a continuing duty to disclose and produce any additional documents identified later that may be used in the respective parties' cases-in-chief. The cost of copying such documents shall be paid by the requesting party.
- (iv) Upon a timely request for a hearing, the School Board or, at the School Board's option, a hearing officer appointed by the School Board shall set a hearing within 15 days of the request and the teacher shall be given at least five days' written notice of the time and the place of the hearing.

b. Procedure for hearing.

- (i) The hearing shall be conducted by the School Board or, at the School Board's option, a hearing officer appointed by the School Board. The teacher and the division superintendent may be represented by legal counsel and another representative, respectively. The hearing shall be private, unless the teacher

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requests a public hearing. The School Board or hearing officer, as the case may be, shall establish the rules for the conduct of the hearing, and such rules shall include the opportunity for the teacher and the division superintendent to make an opening statement and to present all material or relevant evidence, including the testimony of witnesses, and the right of all parties to cross-examine the witnesses. Witnesses may be questioned by the School Board or hearing officer.

- (ii) The parties shall produce such additional evidence as the School Board or hearing officer may deem necessary to an understanding and determination of the dispute. The School Board or hearing officer shall determine the relevancy and materiality of the evidence offered. All evidence shall be taken in the presence of the School Board or hearing officer and of the parties.
- (iii) Exhibits offered by the teacher or the division superintendent may be received in evidence by the School Board or hearing officer and, when so received, shall be marked and made a part of the record.
- (iv) A stenographic record or tape recording of the proceedings shall be taken. The two parties shall share the cost of the recording equally. The record or recording of the proceedings shall be preserved for a period of six months. If the School Board requests that a transcript of the record or recording be made at any time prior to expiration of the six-month period, it shall be made and copies shall be furnished to both parties. The School Board shall bear the expense of the transcription.
- (v) The teacher shall bear his own expenses. The School Board shall bear the expenses of the division superintendent and the hearing officer.
- (vi) 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.

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- (vii) In the event of a hearing conducted by a hearing officer, the recommendation of the hearing officer shall be based exclusively upon the evidence presented at the hearing. Upon the hearing officer's own motion or upon application by the teacher or the division superintendent, the hearing officer may reopen the hearing for the purpose of hearing after discovered evidence upon a finding of good cause by the hearing officer at any time before his recommendation is due. The hearing officer shall transmit his written recommendation and a record or recording of the hearing to the School Board as soon as practicable and no more than 10 business days after the hearing.

- (viii) In the event of a hearing by a hearing officer, the School Board may make its decision upon the record or recording of such hearing or the School Board may elect to conduct a further hearing to receive additional evidence. The School Board must hold such further hearing as soon as practicable and must give written notice of the time and place of such further hearing to the division superintendent and the teacher within 10 business days after the board received the record or recording of the initial hearing. The notice must specify each matter to be inquired into by the School Board. The School Board shall determine the procedure to be followed at such further hearing.

c. School Board determination.

- (i) In the event of a hearing before the School Board, the School Board shall give the teacher its written decision as soon as practicable and no more than 30 days after the hearing. The decision of the School Board shall be reached after considering the evidence and information presented at the School Board hearing.

- (ii) In the event of a hearing before a hearing officer followed by a further hearing by the School Board pursuant to subsection b.(viii) of this section, the School Board shall give the teacher its written decision as soon as practicable and no more than 30 days after such further hearing. The decision of the School Board shall be reached after considering the record or recording of the initial hearing, the recommendations of the hearing officer,

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and the evidence and information presented at the further hearing before the School Board.

- (iii) In the event of a hearing before a hearing officer in cases in which no further hearing is conducted by the School Board, the School Board shall give the teacher its written decision as soon as practicable and no more than 30 days after receiving the record or recording of the hearing. The decision of the School Board shall be reached after considering the record or recording of the hearing and the recommendations of the hearing officer.

 - (iv) The School Board may dismiss or suspend a teacher upon a majority vote of a quorum of the School Board. The School Board's attorney, assistants, or representative, if he or they represented a participant in the prior proceedings; the grievant; the grievant's attorney or representative; and, notwithstanding the provisions of § 22.1-69 of the Code of Virginia, the superintendent shall be excluded from any executive session of the School Board that has as its purpose reaching a decision on a grievance. However, immediately after a decision has been made and publicly announced, as in favor of or not in favor of the grievant, the School Board's attorney or representative and the superintendent may join the School Board in executive session to assist in the writing of the decision.
3. 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

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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.

B. Current Revision: 2/8/21; Previous Revision: 5/2003

Legal Refs: Code of Virginia, 1950, as amended, §§ 22.1-253.13:7.C.8, and 22.1-306, et seq., 8 VAC 20-90-10 through 8 VAC 20-90-80 and accompanying forms