# Agenda Item: D

## Date: February 2, 2023

## Title: First and Final Review of Proposed Amendments to the Procedure for Dismissals to Comport with Legislation from the 2020 General Assembly (Fast-Track)

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## Presenter: Dr. Joan B. Johnson, Assistant Superintendent of Teacher Education and Licensure

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## Purpose of Presentation:

Action required by state or federal law or regulation.

## Executive Summary

During the 2020 Session, the General Assembly passed legislation ([SB377](https://lis.virginia.gov/cgi-bin/legp604.exe?201+ful+CHAP0875)) requiring amendments to the Board of Education’s *Procedure for Adjusting Grievances* (*Procedure*; [8VAC20-90](https://law.lis.virginia.gov/admincode/title8/agency20/chapter90/)), particularly the procedure for dismissals found in [8VAC20-90-70](https://law.lis.virginia.gov/admincode/title8/agency20/chapter90/section70/). All changes are designed to align the regulatory text with §§ [22.1-309](https://law.lis.virginia.gov/vacode/title22.1/chapter15/section22.1-309/) and [22.1-311](https://law.lis.virginia.gov/vacode/title22.1/chapter15/section22.1-311/) of the *Code of Virginia*. This agenda item also includes amendments to [8VAC20-90-10](https://law.lis.virginia.gov/admincode/title8/agency20/chapter90/section10/) in order to conform the definition of “grievance” and add a definition of “military status,” pursuant to legislation in [2020](https://lis.virginia.gov/cgi-bin/legp604.exe?201+ful+CHAP1137&201+ful+CHAP1137) and [2021](https://lis.virginia.gov/cgi-bin/legp604.exe?212+ful+CHAP0477&212+ful+CHAP0477), respectively. On January 9, 2023, ABTEL recommended that the Board amend the *Procedure* as recommended in this item.

The proposed amendments to the *Procedure* incorporate these legislative changes and will follow the fast-track rulemaking requirements of the Administrative Process Act (APA). Section [2.2-4012.1](https://law.lis.virginia.gov/vacode/title2.2/chapter40/section2.2-4012.1/) of the *Code of Virginia* provides the fast-track rulemaking process for rules that are expected to be noncontroversial. In this case, VDOE staff expects the item to be noncontroversial because the regulatory action is to bring the Board’s regulations into alignment with the relevant sections of the *Code of Virginia*.

## Action Requested:

Final review: Action requested at this meeting

## Superintendent’s Recommendation

The Superintendent of Public Instruction recommends that the Board waive first review and approve this fast-track regulatory action.

**Rationale for Action:**

This action is necessary in order to conform the Board’s regulations to statute. The agency is not exercising discretion in conforming the regulatory text to the relevant statutory provisions.

## Previous Review or Action:

No previous review or action.

## Background Information and Statutory Authority:

[SB377](https://lis.virginia.gov/cgi-bin/legp604.exe?201+ful+CHAP0875) (2020) amended §§ §§ [22.1-309](https://law.lis.virginia.gov/vacode/title22.1/chapter15/section22.1-309/) and [22.1-311](https://law.lis.virginia.gov/vacode/title22.1/chapter15/section22.1-311/) of the *Code of Virginia* to permit a school board to conduct a teacher grievance hearing before a three-member fact-finding panel consisting of one member selected by the teacher, one member selected by the division superintendent, and an impartial hearing officer selected by the other two panel members to serve as the chairman of the panel. Under the amended law, the school board continues to have the option of appointing a hearing officer or conducting the hearing itself. The bill also removes the requirement that a teacher grievance hearing be set within 15 days of the request for such hearing and extends from five days to 10 days the minimum period of advanced written notice to the teacher of the time and place of such hearing.

This agenda item also includes amendments to [8VAC20-90-10](https://law.lis.virginia.gov/admincode/title8/agency20/chapter90/section10/) in order to conform the definition of “grievance” and add a definition of “military status,” pursuant to legislation in [2020](https://lis.virginia.gov/cgi-bin/legp604.exe?201+ful+CHAP1137&201+ful+CHAP1137) and [2021](https://lis.virginia.gov/cgi-bin/legp604.exe?212+ful+CHAP0477&212+ful+CHAP0477), respectively.

Section [22.1-308](https://law.lis.virginia.gov/vacode/title22.1/chapter15/section22.1-308/) A 9 of the *Code of Virginia* requires that the Board prescribe a grievance procedure that includes “[t]he provisions of  §§ [22.1-309](http://law.lis.virginia.gov/vacode/22.1-309/) through [22.1-313](http://law.lis.virginia.gov/vacode/22.1-313/) [of the *Code of Virginia*].” Additional changes are designed to conform the Board’s regulation to the statutory text.

Changes to the regulatory text are included in Attachment A.

**Timetable for Further Review/Action:**

After approval by the Board, the action will be submitted to Town Hall for publication in the Virginia Register of Regulations, pursuant to the Virginia Administrative Process Act.

**Impact on Fiscal and Human Resources:**

The agency does not anticipate that this action will have an impact on fiscal or human resources.

## Timetable for Further Review/Action:

Following Board approval, this regulatory action will be submitted to Town Hall for publication in the Virginia Register of Regulations, pursuant to the requirements of the Administrative Process Act.

## Impact on Fiscal and Human Resources:

There are no fiscal or human resources impacts with this change.