

HUMAN RESOURCES

Employee Actions and Records

Procedures for Nonrenewal and Dismissal—Educational Personnel

This regulation supersedes Regulation 4294.5

I. PURPOSE

To establish procedures by which employment of contracted educational personnel may be discontinued by nonrenewal or dismissal.

II. SUMMARY OF CHANGES SINCE LAST PUBLICATION

This policy has been revised to comply with amendments to the Code of Virginia enacted on July 1, 2020. The revisions create a process for a three member fact-finding panel for dismissal hearings that will remain in place until the Virginia Board of Education publishes revised administrative procedures to govern the panel process.

III. NONRENEWAL OF CONTRACTS

A. Annual Contract Employees

The nonrenewal of an annual contract employee shall be in accordance with applicable provisions of the Code of Virginia.

B. Recommendation Deadline

In the absence of unusual circumstances such as potential budget limitations or other problems, the principal or program manager shall submit nonrenewal recommendations of annual contract employees to the assistant superintendent, Department of Human Resources, in writing on or before April 25. The School Board shall act on the Division Superintendent's recommendation in sufficient time for notice to be given to employees by June 15.

IV. DISMISSAL OF EDUCATIONAL EMPLOYEES

A. Annual and Continuing Contract Employees

The dismissal of an employee on continuing contract or the dismissal of an employee during the term of an annual contract shall be in accordance with applicable provisions of the Code of Virginia and Virginia Board of Education regulations.

B. Recommendation for Dismissal

The principal, program manager, director, or assistant superintendent may recommend the dismissal of an educational employee. Such a recommendation requires that the following actions be taken:

1. The principal, program manager, director, or assistant superintendent shall notify the educational employee and the assistant superintendent, Department of Human Resources, or his or her designee in writing of his/her recommendation to dismiss the employee. The assistant superintendent, Department of Human Resources, may also originate a recommendation for dismissal and must so inform the employee in writing.
2. The assistant superintendent, Department of Human Resources, shall review and forward the recommendation for dismissal to the Division Superintendent.
3. The Division Superintendent shall recommend dismissal to the School Board. The assistant superintendent, Department of Human Resources, shall notify the employee in writing of this action in accordance with applicable provisions of the Code of Virginia.
4. Subsequent to the notification that an educational employee is being recommended for dismissal, the School Board shall not discuss or act upon the recommendation of the Division Superintendent except as provided for in this regulation or in the Code of Virginia.
5. At the request of the educational employee, the division superintendent shall provide the reasons for the recommendation in writing or, if the educational employee prefers, in a personal interview. In the event an educational employee requests a hearing pursuant to Section 22.1-311 of the Code of Virginia, the Division Superintendent shall provide, within ten days of the request, the educational employee or his/her representative with the opportunity to inspect and copy his/her personnel file and all other documents relied upon in reaching the decision to recommend dismissal. Within ten days of the request of the division superintendent, the educational employee or his/her 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.

C. School Board Hearing

Hearings on recommendations to dismiss shall be conducted in accordance with applicable provisions of the Code of Virginia and Virginia Board of Education regulations. The fact-finding panel procedures in the attachment to this Regulation will be used until the Virginia Board of Education revises Part III – Dismissal Procedure (8 VAC 20-90-60, *et seq*). The procedures should be construed pursuant to the definitions found in 8 VAC 20-90-10 as they apply to Part III – Dismissal Procedure.

D. Final Decision

The decision of the School Board in regard to a recommendation for dismissal shall be final.

Legal reference: Code of Virginia, Section 22.1, Chapter 15, Articles 2 and 3
8 VAC 20-90-10, *et seq.*

Attachment

FAIRFAX COUNTY PUBLIC SCHOOLS

TEACHER DISMISSAL PROCEDURE

I. Fact-Finding Panel

A. Request

Within 15 days after the teacher receives the notice of dismissal pursuant to Virginia Code section 22.1-309, the teacher may elect to have a hearing before a fact-finding panel prior to any decision by the school board.

B. Panel

Within fifteen business days after the receipt by the division superintendent of the request for a fact-finding panel, the teacher and the division superintendent shall each select one panel member from among the employees of the school division other than an individual involved in the recommendation of dismissal as a supervisor, witness, or representative. The names of selected panel members will be provided to the Office of Division Counsel, who will provide the panel members with a list of the impartial hearing officers approved by the School Board.

Within five business days of their selection, the two panel members shall select hearing officer from the list of impartial hearing officers. The hearing officer shall chair the panel, and shall have the authority to conduct the hearing and make recommendations as set forth herein.

C. Hearing

The hearing shall be held by the panel within 30 calendar days from the date of the selection of the impartial hearing officer, as coordinated through the Office of Division Counsel. The panel shall set the date, place, and time for the hearing and shall so notify the division superintendent and the teacher. The teacher and the division superintendent may each be present at the hearing and be represented at all stages by legal counsel or another representative.

D. Procedure for fact-finding panel.

1. The hearing officer shall establish the rules for the conduct of the hearing
2. The panel shall determine the propriety of attendance at the hearing of persons not having a direct interest in the hearing, provided that, at the request of the teacher, the hearing shall be private.
3. At the beginning of the hearing, the panel may ask for opening statements from the division superintendent and the teacher (or their representative) clarifying the issues involved.

4. The parties shall then present their claims and evidence. Witnesses may be questioned by the panel members, the teacher and the division superintendent. However, the panel may, at its discretion, vary this procedure but shall afford full an equal opportunity to all parties for presentation of any material or relevant evidence and shall afford the parties the right of cross-examination. The parties shall produce such additional evidence as the panel may deem necessary to aid in understanding and make a determination regarding the dispute.

5. The panel shall determine relevancy and materiality of the evidence offered. All evidence shall be taken in the presence of the panel and of the parties.

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

7. The facts found and recommendations made by the panel shall be arrived at by a majority vote of the panel members.

8. The recommendations and findings of fact of the panel shall be based exclusively upon the evidence presented to the panel at the hearing. No panel member shall conduct an independent investigation involving the matter.

9. The hearing may be reopened by the panel at any time before the panel's report is made upon its own motion or upon application of the teacher or the division superintendent for good cause shown to hear after-discovered evidence.

10. The panel shall make a written report which shall include its findings of fact and recommendations and shall file it with the Clerk of the school board, with copies to the division superintendent and the teacher, no later than 10 days after the completion of the hearing.

11. A stenographic record or tape recording of the proceedings shall be taken. 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 requesting party shall bear the expense of its preparation.

E. Expenses.

1. The teacher shall bear their 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.

2. The hearing officer shall set the per diem rate of the other two panel members. No employee of the school division shall receive such per diem for service on a panel during their normal business hours if they receive their normal salary for the period of such service.

3. Witnesses who are employees of the school board shall be granted release time if the hearing is held during the school day.

II. School Board

A. School board hearing procedures

1. In the event of a hearing by a fact-finding panel, 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.

2. 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.

3. In any case in which a further hearing is held by a school board after a hearing before the fact-finding panel, the school board shall consider 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 as the school board deems may be appropriate or as may be offered on behalf of the teacher or the superintendent.

4. 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.

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.

B.-School board determination.

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 the fact and recommendation. 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. If an additional hearing is held by the School Board, the school board shall give the teacher its written decision within 30 days of such further hearing.