

2006 SESSION

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SENATE BILL NO. 700

Offered January 20, 2006

A BILL to amend and reenact §§ 2.2-3004, 15.2-1507, 15.2-1604, and 22.1-306 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 2.2-2901.1, 15.2-1500.1, and 22.1-295.2, relating to nondiscrimination in public employment.

Patrons—Lucas, Locke, Devolites Davis, Edwards, Howell, Lambert, Marsh, Miller, Potts and Ticer

Referred to Committee on General Laws and Technology

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-3004, 15.2-1507, 15.2-1604, and 22.1-306 of the Code of Virginia are amended and reenacted and the Code of Virginia is amended by adding sections numbered §§ 2.2-2901.1, 15.2-1500.1, and 22.1-295.2 as follows:

§ 2.2-2901.1. Employment discrimination prohibited.

No state agency, institution, board, bureau, commission, council, or instrumentality of the Commonwealth shall discriminate in employment based on race, color, religion, national origin, sex, pregnancy, childbirth or related medical conditions, age, marital status, disability, sexual orientation, or status as a special disabled veteran or other veteran covered by the Vietnam Era Veterans Readjustment Act of 1974, as amended.

"Sexual orientation" means a person's actual or perceived heterosexuality, bisexuality, homosexuality or gender identity or expression. "Sexual orientation" does not include sexually deviant disorders (paraphilias) as defined in the Diagnostic and Statistical Manual of Mental Disorders (DSM-IV).

§ 2.2-3004. Grievances qualifying for a grievance hearing; grievance hearing generally.

A. A grievance qualifying for a hearing shall involve a complaint or dispute by an employee relating to the following adverse employment actions in which the employee is personally involved, including but not limited to (i) formal disciplinary actions, including suspensions, demotions, transfers and assignments, and dismissals resulting from formal discipline or unsatisfactory job performance; (ii) the application of all written personnel policies, procedures, rules and regulations where it can be shown that policy was misapplied or unfairly applied; (iii) discrimination on the basis of race, color, religion, political affiliation, age, disability, national origin or sex pregnancy, childbirth or related medical conditions, sexual orientation or status as a special disabled veteran or other veteran covered by the Vietnam Era Veterans Readjustment Act of 1974 as amended; (iv) arbitrary or capricious performance evaluations; (v) acts of retaliation as the result of the use of or participation in the grievance procedure or because the employee has complied with any law of the United States or of the Commonwealth, has reported any violation of such law to a governmental authority, has sought any change in law before the Congress of the United States or the General Assembly, or has reported an incidence of fraud, abuse, or gross mismanagement; and (vi) retaliation for exercising any right otherwise protected by law.

B. Management reserves the exclusive right to manage the affairs and operations of state government. Management shall exercise its powers with the highest degree of trust. In any employment matter that management precludes from proceeding to a grievance hearing, management's response, including any appropriate remedial actions, shall be prompt, complete, and fair.

C. Complaints relating solely to the following issues shall not proceed to a hearing: (i) establishment and revision of wages, salaries, position classifications, or general benefits; (ii) work activity accepted by the employee as a condition of employment or which may reasonably be expected to be a part of the job content; (iii) contents of ordinances, statutes or established personnel policies, procedures, and rules and regulations; (iv) methods, means, and personnel by which work activities are to be carried on; (v) termination, layoff, demotion, or suspension from duties because of lack of work, reduction in work force, or job abolition; (vi) hiring, promotion, transfer, assignment, and retention of employees within the agency; and (vii) relief of employees from duties of the agency in emergencies.

D. Decisions regarding whether a grievance qualifies for a hearing shall be made in writing by the agency head or his designee within five workdays of the employee's request for a hearing. A copy of the decision shall be sent to the employee. The employee may appeal the denial of a hearing by the agency head to the Director of the Department of Employment Dispute Resolution (the "Director"). Upon receipt of an appeal, the agency shall transmit the entire grievance record to the Department of Employment Dispute Resolution within five workdays. The Director shall render a decision on whether the employee is entitled to a hearing upon the grievance record and other probative evidence.

E. Proceedings for review of the decision of the Director may be made by an employee filing a notice of appeal within five workdays of receipt of the decision. Within five workdays thereafter, the

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59 agency shall transmit to the clerk of the circuit court in the jurisdiction in which the grievance arose a
60 copy of the grievance record. The court, on motion of the grievant, may issue a writ of certiorari
61 requiring the Director to transmit the record on or before a certain date. Within thirty days of receipt of
62 such records, the court, sitting without a jury, shall hear the appeal on the record and such additional
63 evidence as may be necessary to resolve any controversy as to the correctness of the record. The court,
64 in its discretion, may receive such other evidence as the ends of justice require. The court may affirm
65 the decision of the Director or may reverse or modify the decision. The decision of the court shall be
66 rendered no later than the fifteenth day from the date of the conclusion of the hearing. The decision of
67 the court shall be final and shall not be appealable. The circuit court hearing shall be at no cost to the
68 Commonwealth or the grievant.

69 F. The hearing pursuant to § 2.2-3005 shall be held in the locality in which the employee is
70 employed or in any other locality agreed to by the employee, employer, and hearing officer. The
71 employee and the agency may be represented by legal counsel or a lay advocate, the provisions of
72 § 54.1-3904 notwithstanding. The employee and the agency may call witnesses to present testimony and
73 be cross-examined.

74 § 15.2-1500.1. *Employment discrimination prohibited.*

75 No department, office, board, commission, agency or instrumentality of local government shall
76 discriminate in employment based on race, color, religion, national origin, sex, pregnancy, childbirth or
77 related medical conditions, age, marital status, disability, sexual orientation, or status as a special
78 disabled veteran or veteran covered by the Vietnam Era Veterans Readjustment Act of 1974, as
79 amended.

80 "Sexual orientation" means a person's actual or perceived heterosexuality, bisexuality, homosexuality
81 or gender identity or expression. "Sexual orientation" does not include sexually deviant disorders
82 ("paraphilias") as defined in the Diagnostic and Statistical Manual of Mental Disorders (DSM-IV).

83 § 15.2-1507. Provision of grievance procedure; training programs.

84 A. If a local governing body fails to adopt a grievance procedure required by § 15.2-1506 or fails to
85 certify it as provided in this section, the local governing body shall be deemed to have adopted a
86 grievance procedure which is consistent with the provisions of Chapter 30 (§ 2.2-3000 et seq.) of Title
87 2.2 and any regulations adopted pursuant thereto for so long as the locality remains in noncompliance.
88 The locality shall provide its employees with copies of the applicable grievance procedure upon request.
89 The term "grievance" as used herein shall not be interpreted to mean negotiations of wages, salaries, or
90 fringe benefits.

91 Each grievance procedure, and each amendment thereto, in order to comply with this section, shall
92 be certified in writing to be in compliance by the city, town or county attorney, and the chief
93 administrative officer of the locality, and such certification filed with the clerk of the circuit court
94 having jurisdiction in the locality in which the procedure is to apply. Local government grievance
95 procedures in effect as of July 1, 1991, shall remain in full force and effect for 90 days thereafter,
96 unless certified and filed as provided above within a shorter time period.

97 Each grievance procedure shall include the following components and features:

98 1. Definition of grievance. A grievance shall be a complaint or dispute by an employee relating to
99 his employment, including but not necessarily limited to (i) disciplinary actions, including dismissals,
100 disciplinary demotions, and suspensions, provided that dismissals shall be grievable whenever resulting
101 from formal discipline or unsatisfactory job performance; (ii) the application of personnel policies,
102 procedures, rules and regulations, including the application of policies involving matters referred to in
103 subdivision 2 (iii) below; (iii) discrimination on the basis of race, color, creed, religion, political
104 affiliation, age, disability, national origin, sex, pregnancy, childbirth or related medical conditions,
105 marital status, sexual orientation or status as a special disabled veteran or other veteran covered by the
106 Vietnam Era Veterans Readjustment Act of 1974 as amended; and (iv) acts of retaliation as the result of
107 the use of or participation in the grievance procedure or because the employee has complied with any
108 law of the United States or of the Commonwealth, has reported any violation of such law to a
109 governmental authority, has sought any change in law before the Congress of the United States or the
110 General Assembly, or has reported an incidence of fraud, abuse, or gross mismanagement. For the
111 purposes of clause (iv) there shall be a rebuttable presumption that increasing the penalty that is the
112 subject of the grievance at any level of the grievance shall be an act of retaliation.

113 2. Local government responsibilities. Local governments shall retain the exclusive right to manage
114 the affairs and operations of government. Accordingly, the following complaints are nongrievable: (i)
115 establishment and revision of wages or salaries, position classification or general benefits; (ii) work
116 activity accepted by the employee as a condition of employment or work activity which may reasonably
117 be expected to be a part of the job content; (iii) the contents of ordinances, statutes or established
118 personnel policies, procedures, rules and regulations; (iv) failure to promote except where the employee
119 can show that established promotional policies or procedures were not followed or applied fairly; (v) the
120 methods, means and personnel by which work activities are to be carried on; (vi) except where such

action affects an employee who has been reinstated within the previous six months as the result of the final determination of a grievance, termination, layoff, demotion or suspension from duties because of lack of work, reduction in work force, or job abolition; (vii) the hiring, promotion, transfer, assignment and retention of employees within the local government; and (viii) the relief of employees from duties of the local government in emergencies. In any grievance brought under the exception to clause (vi) of this subdivision, the action shall be upheld upon a showing by the local government that: (i) there was a valid business reason for the action and (ii) the employee was notified of the reason in writing prior to the effective date of the action.

3. Coverage of personnel.

a. Unless otherwise provided by law, all nonprobationary local government permanent full-time and part-time employees are eligible to file grievances with the following exceptions:

- (1) Appointees of elected groups or individuals;
- (2) Officials and employees who by charter or other law serve at the will or pleasure of an appointing authority;
- (3) Deputies and executive assistants to the chief administrative officer of a locality;
- (4) Agency heads or chief executive officers of government operations;
- (5) Employees whose terms of employment are limited by law;
- (6) Temporary, limited term and seasonal employees;
- (7) Law-enforcement officers as defined in Chapter 5 (§ 9.1-500 et seq.) of Title 9.1 whose grievance is subject to the provisions of Chapter 10.1 and who have elected to proceed pursuant to those provisions in the resolution of their grievance, or any other employee electing to proceed pursuant to any other existing procedure in the resolution of his grievance.

b. Notwithstanding the exceptions set forth in subdivision 3 a above, local governments, at their sole discretion, may voluntarily include employees in any of the excepted categories within the coverage of their grievance procedures.

c. The chief administrative officer of each local government, or his designee, shall determine the officers and employees excluded from the grievance procedure, and shall be responsible for maintaining an up-to-date list of the affected positions.

4. Grievance procedure availability and coverage for employees of community services boards, redevelopment and housing authorities, and regional housing authorities. Employees of community services boards, redevelopment and housing authorities created pursuant to § 36-4, and regional housing authorities created pursuant to § 36-40 shall be included in (i) a local governing body's grievance procedure or personnel system, if agreed to by the department, board, or authority and the locality or (ii) a grievance procedure established and administered by the department, board or authority which is consistent with the provisions of Chapter 30 (§ 2.2-3000 et seq.) of Title 2.2 and any regulations promulgated pursuant thereto. If a department, board or authority fails to establish a grievance procedure pursuant to clause (i) or (ii), it shall be deemed to have adopted a grievance procedure which is consistent with the provisions of Chapter 30 (§ 2.2-3000 et seq.) of Title 2.2 and any regulations adopted pursuant thereto for so long as it remains in noncompliance.

5. General requirements for procedures.

a. Each grievance procedure shall include not more than four steps for airing complaints at successively higher levels of local government management, and a final step providing for a panel hearing.

b. Grievance procedures shall prescribe reasonable and specific time limitations for the grievant to submit an initial complaint and to appeal each decision through the steps of the grievance procedure.

c. Nothing contained in this section shall prohibit a local government from granting its employees rights greater than those contained herein, provided such grant does not exceed or violate the general law or public policy of the Commonwealth.

6. Time periods.

a. It is intended that speedy attention to employee grievances be promoted, consistent with the ability of the parties to prepare for a fair consideration of the issues of concern.

b. The time for submitting an initial complaint shall not be less than 20 calendar days after the event giving rise to the grievance, but local governments may, at their option, allow a longer time period.

c. Limits for steps after initial presentation of grievance shall be the same or greater for the grievant than the time which is allowed for local government response in each comparable situation.

d. Time frames may be extended by mutual agreement of the local government and the grievant.

7. Compliance.

a. After the initial filing of a written grievance, failure of either party to comply with all substantial procedural requirements of the grievance procedure, including the panel hearing, without just cause shall result in a decision in favor of the other party on any grievable issue, provided the party not in compliance fails to correct the noncompliance within five workdays of receipt of written notification by

182 the other party of the compliance violation. Such written notification by the grievant shall be made to
183 the chief administrative officer, or his designee.

184 b. The chief administrative officer, or his designee, at his option, may require a clear written
185 explanation of the basis for just cause extensions or exceptions. The chief administrative officer, or his
186 designee, shall determine compliance issues. Compliance determinations made by the chief
187 administrative officer shall be subject to judicial review by filing petition with the circuit court within
188 30 days of the compliance determination.

189 8. Management steps.

190 a. The first step shall provide for an informal, initial processing of employee complaints by the
191 immediate supervisor through a nonwritten, discussion format.

192 b. Management steps shall provide for a review with higher levels of local government authority
193 following the employee's reduction to writing of the grievance and the relief requested on forms
194 supplied by the local government. Personal face-to-face meetings are required at all of these steps.

195 c. With the exception of the final management step, the only persons who may normally be present
196 in the management step meetings are the grievant, the appropriate local government official at the level
197 at which the grievance is being heard, and appropriate witnesses for each side. Witnesses shall be
198 present only while actually providing testimony. At the final management step, the grievant, at his
199 option, may have present a representative of his choice. If the grievant is represented by legal counsel,
200 local government likewise has the option of being represented by counsel.

201 9. Qualification for panel hearing.

202 a. Decisions regarding grievability and access to the procedure shall be made by the chief
203 administrative officer of the local government, or his designee, at any time prior to the panel hearing, at
204 the request of the local government or grievant, within 10 calendar days of the request. No city, town,
205 or county attorney, or attorney for the Commonwealth, shall be authorized to decide the question of
206 grievability. A copy of the ruling shall be sent to the grievant. Decisions of the chief administrative
207 officer of the local government, or his designee, may be appealed to the circuit court having jurisdiction
208 in the locality in which the grievant is employed for a hearing on the issue of whether the grievance
209 qualifies for a panel hearing. Proceedings for review of the decision of the chief administrative officer or
210 his designee shall be instituted by the grievant by filing a notice of appeal with the chief administrative
211 officer within 10 calendar days from the date of receipt of the decision and giving a copy thereof to all
212 other parties. Within 10 calendar days thereafter, the chief administrative officer or his designee shall
213 transmit to the clerk of the court to which the appeal is taken: a copy of the decision of the chief
214 administrative officer, a copy of the notice of appeal, and the exhibits. A list of the evidence furnished
215 to the court shall also be furnished to the grievant. The failure of the chief administrative officer or his
216 designee to transmit the record shall not prejudice the rights of the grievant. The court, on motion of the
217 grievant, may issue a writ of certiorari requiring the chief administrative officer to transmit the record on
218 or before a certain date.

219 b. Within 30 days of receipt of such records by the clerk, the court, sitting without a jury, shall hear
220 the appeal on the record transmitted by the chief administrative officer or his designee and such
221 additional evidence as may be necessary to resolve any controversy as to the correctness of the record.
222 The court, in its discretion, may receive such other evidence as the ends of justice require. The court
223 may affirm the decision of the chief administrative officer or his designee, or may reverse or modify the
224 decision. The decision of the court shall be rendered no later than the fifteenth day from the date of the
225 conclusion of the hearing. The decision of the court is final and is not appealable.

226 10. Panel hearings.

227 a. Qualifying grievances shall advance to the final step as described below:

228 (1) With the exception of those local governments covered by subdivision a (2) of this subsection,
229 the final step shall provide for a hearing before an impartial panel, consisting of one member appointed
230 by the grievant, one member appointed by the agency head and a third member selected by the first
231 two. In the event that agreement cannot be reached as to the final panel member, the chief judge of the
232 circuit court of the jurisdiction wherein the dispute arose shall select the third panel member. The panel
233 shall not be composed of any persons having direct involvement with the grievance being heard by the
234 panel, or with the complaint or dispute giving rise to the grievance. Managers who are in a direct line of
235 supervision of a grievant, persons residing in the same household as the grievant and the following
236 relatives of a participant in the grievance process or a participant's spouse are prohibited from serving as
237 panel members: spouse, parent, child, descendants of a child, sibling, niece, nephew and first cousin. No
238 attorney having direct involvement with the subject matter of the grievance, nor a partner, associate,
239 employee or co-employee of the attorney shall serve as a panel member.

240 (2) Local governments may retain the panel composition method previously approved by the
241 Department of Employment Dispute Resolution and in effect as of the enactment of this statute.
242 Modifications to the panel composition method shall be permitted with regard to the size of the panel
243 and the terms of office for panel members, so long as the basic integrity and independence of panels are

maintained. As used in this section, the term "panel" shall include all bodies designated and authorized to make final and binding decisions.

(3) Local governments shall not be required to have an administrative hearing officer in any case, but may do so in employee termination or retaliation cases at their option. When a local government elects to use an administrative hearing officer as the third panel member in an employee termination or retaliation case, the administrative hearing officer shall be appointed by the Executive Secretary of the Supreme Court. The appointment shall be made from the list of administrative hearing officers maintained by the Executive Secretary pursuant to § 2.2-4024 and shall be made from the appropriate geographical region on a rotating basis. If a local government elects to use an administrative hearing officer, it shall bear the expense of such officer's services.

(4) In all cases there shall be a chairperson of the panel and, when panels are composed of three persons (one each selected by the respective parties and the third from an impartial source), the third member shall be the chairperson.

(5) Both the grievant and the respondent may call upon appropriate witnesses and be represented by legal counsel or other representatives at the panel hearing. Such representatives may examine, cross-examine, question and present evidence on behalf of the grievant or respondent before the panel without being in violation of the provisions of § 54.1-3904.

(6) The decision of the panel shall be final and binding and shall be consistent with provisions of law and written policy.

(7) The question of whether the relief granted by a panel is consistent with written policy shall be determined by the chief administrative officer of the local government, or his designee, unless such person has a direct personal involvement with the event or events giving rise to the grievance, in which case the decision shall be made by the attorney for the Commonwealth of the jurisdiction in which the grievance is pending.

b. Rules for panel hearings.

Unless otherwise provided by law, local governments shall adopt rules for the conduct of panel hearings as a part of their grievance procedures, or shall adopt separate rules for such hearings. Rules which are promulgated shall include, but need not be limited to the following provisions:

(1) That panels do not have authority to formulate policies or procedures or to alter existing policies or procedures;

(2) That panels have the discretion to determine the propriety of attendance at the hearing of persons not having a direct interest in the hearing, and, at the request of either party, the hearing shall be private;

(3) That the local government provide the panel with copies of the grievance record prior to the hearing, and provide the grievant with a list of the documents furnished to the panel and the grievant and his attorney, at least ten days prior to the scheduled panel hearing, shall be allowed access to and copies of all relevant files intended to be used in the grievance proceeding;

(4) That panels have the authority to determine the admissibility of evidence without regard to the burden of proof, or the order of presentation of evidence, so long as a full and equal opportunity is afforded to all parties for the presentation of their evidence;

(5) That all evidence be presented in the presence of the panel and the parties, except by mutual consent of the parties;

(6) That documents, exhibits and lists of witnesses be exchanged between the parties in advance of the hearing;

(7) That the majority decision of the panel, acting within the scope of its authority, be final, subject to existing policies, procedures and law;

(8) That the panel decision be provided within a specified time to all parties; and

(9) Such other provisions as may facilitate fair and expeditious hearings, with the understanding that the hearings are not intended to be conducted like proceedings in courts, and that rules of evidence do not necessarily apply.

11. Implementation of panel decisions.

Either party may petition the circuit court having jurisdiction in the locality in which the grievant is employed for an order requiring implementation of the panel decision.

B. Notwithstanding the contrary provisions of this section, a final panel decision rendered under the provisions of this section which would result in the reinstatement of any employee of a sheriff's office, who has been terminated for cause may be reviewed by the circuit court for the locality upon the petition of the locality. The review of the circuit court shall be limited to the question of whether the panel's decision was consistent with provisions of law and written policy.

§ 15.2-1604. Appointment of deputies and employment of employees; discriminatory practices by certain officers; civil penalty.

A. It shall be an unlawful employment practice for a constitutional officer:

1. To fail or refuse to appoint or hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions or privileges of appointment or employment, because of such individual's race, color, religion, sex, *pregnancy, childbirth or related medical conditions, disability, sexual orientation status as a special disabled veteran or other veteran covered by the Vietnam Era Veterans Readjustment Act of 1974, as amended* or national origin; or

2. To limit, segregate, or classify his appointees, employees or applicants for appointment or employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of the individual's race, color, religion, sex or national origin.

"Sexual orientation" means a person's actual or perceived heterosexuality, bisexuality, homosexuality or gender identity or expression. "Sexual orientation" does not include sexually deviant disorders ("paraphilias") as defined in the Diagnostic and Statistical manual of Mental Disorders (DSM-IV).

B. Nothing in this section shall be construed to make it an unlawful employment practice for a constitutional officer to hire or appoint an individual on the basis of his sex or national origin in those instances where sex or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of that particular office. The provisions of this section shall not apply to policy-making positions, confidential or personal staff positions, or undercover positions.

C. With regard to notices and advertisements:

1. Every constitutional officer shall, prior to hiring any employee, advertise such employment position in a newspaper having general circulation or a state or local government job placement service in such constitutional officer's locality except where the vacancy is to be used (i) as a placement opportunity for appointees or employees affected by layoff, (ii) as a transfer opportunity or demotion for an incumbent, (iii) to fill positions that have been advertised within the past 120 days, (iv) to fill positions to be filled by appointees or employees returning from leave with or without pay, (v) to fill temporary positions, temporary employees being those employees hired to work on special projects that have durations of three months or less, or (vi) to fill policy-making positions, confidential or personal staff positions, or special, sensitive law-enforcement positions normally regarded as undercover work.

2. No constitutional officer shall print or publish or cause to be printed or published any notice or advertisement relating to employment by such constitutional officer indicating any preference, limitation, specification, or discrimination, based on sex or national origin, except that such notice or advertisement may indicate a preference, limitation, specification, or discrimination based on sex or national origin when sex or national origin is a bona fide occupational qualification for employment.

D. Complaints regarding violations of subsection A of this section may be made to the Virginia Council on Human Rights. The Council shall have the authority to exercise its powers as outlined in § 2.2-2634.

E. Any constitutional officer who willfully violates the provisions of subsection C shall be subject to a civil penalty not to exceed \$2,000.

§ 22.1-295.2. *Employment discrimination prohibited.*

No school board or any agent or employee thereof shall discriminate in employment based on race, color, religion, national origin, sex, pregnancy, childbirth or related medical conditions, age, marital status, disability, sexual orientation, or status as a special disabled veteran or other veteran covered by the Vietnam Era Veterans Readjustment Act of 1974, as amended.

"Sexual orientation" means a person's actual or perceived heterosexuality, bisexuality, homosexuality or gender identity or expression. "Sexual orientation" does not include sexually deviant disorders ("paraphilias") as defined in the Diagnostic and Statistical Manual of Mental Disorders (DSM-IV).

§ 22.1-306. Definitions. As used in this article:

"Grievance" means a complaint or dispute by a teacher relating to his or her employment including, but not necessarily limited to: (i) disciplinary action including dismissal or placing on probation; (ii) the application or interpretation of: (a) personnel policies, (b) procedures, (c) rules and regulations, (d) ordinances and (e) statutes; (iii) acts of reprisal against a teacher for filing or processing a grievance, participating as a witness in any step, meeting or hearing relating to a grievance, or serving as a member of a fact-finding panel; and (iv) complaints of discrimination on the basis of race, color, ~~ereed~~, religion political affiliation, ~~handicap~~ disability, age, national origin, sexual orientation, ~~or~~ sex, pregnancy, childbirth or related medical conditions, marital status, or status as a special disabled veteran or other veteran covered by the Vietnam Era Veterans Readjustment Act of 1974, as amended. Each school board shall have the exclusive right to manage the affairs and operations of the school division. Accordingly, the term "grievance" shall not include a complaint or dispute by a teacher relating to (i) establishment and revision of wages or salaries, position classifications or general benefits, (ii) suspension of a teacher or nonrenewal of the contract of a teacher who has not achieved continuing contract status, (iii) the establishment or contents of ordinances, statutes or personnel policies, procedures, rules and regulations, (iv) failure to promote, (v) discharge, layoff or suspension from duties because of decrease in enrollment, decrease in enrollment or abolition of a particular subject or

367 insufficient funding, (vi) hiring, transfer, assignment and retention of teachers within the school division,
368 (vii) suspension from duties in emergencies, or (viii) the methods, means and personnel by which the
369 school division's operations are to be carried on.
370 While these management rights are reserved to the school board, failure to apply, where applicable,
371 the rules, regulations, policies, or procedures as written or established by the school board is grievable.
372 "Dismissal" means the dismissal of any teacher during the term of such teacher's contract and the
373 nonrenewal of the contract of a teacher on continuing contract.