

2012 SESSION

LEGISLATION NOT PREPARED BY DLS
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HOUSE BILL NO. 1175

Offered January 17, 2012

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.*

Patron—Englin

Referred to Committee on General Laws

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 that 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 in violation of the Equal Protection Clause of the United States Constitution, Article 1, Section 11 of the Virginia Constitution or the Virginia Human Rights Act, §§2.2-3900, et seq.

§ 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 in violation of § 2.2-2901.1 on the basis of race, color, religion, political affiliation, age, disability, national origin or sex; (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 agency shall transmit to the clerk of the circuit court in the jurisdiction in which the grievance arose a copy of the grievance record. The court, on motion of the grievant, may issue a writ of certiorari requiring the Director to transmit the record on or before a certain date. Within thirty days of receipt of such records, the court, sitting without a jury, shall hear the appeal on the record and such additional evidence as may be necessary to resolve any controversy as to the correctness of the record. The court,

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59 in its discretion, may receive such other evidence as the ends of justice require. The court may affirm
60 the decision of the Director or may reverse or modify the decision. The decision of the court shall be
61 rendered no later than the fifteenth day from the date of the conclusion of the hearing. The decision of
62 the court shall be final and shall not be appealable. The circuit court hearing shall be at no cost to the
63 Commonwealth or the grievant.

64 F. The hearing pursuant to § 2.2-3005 shall be held in the locality in which the employee is
65 employed or in any other locality agreed to by the employee, employer, and hearing officer. The
66 employee and the agency may be represented by legal counsel or a lay advocate, the provisions of
67 § 54.1-3904 notwithstanding. The employee and the agency may call witnesses to present testimony and
68 be cross-examined.

69 § 15.2-1500.1. *Employment discrimination prohibited.*

70 *No department, office, board, commission, agency, or instrumentality of local government shall*
71 *discriminate in employment in violation of the Equal Protection Clause of the United States*
72 *Constitution, Article 1, Section 11 of the Virginia Constitution or the Virginia Human Rights Act,*
73 *§§2.2-3900, et seq.*

74 § 15.2-1507. Provision of grievance procedure; training programs.

75 A. If a local governing body fails to adopt a grievance procedure required by § 15.2-1506 or fails to
76 certify it as provided in this section, the local governing body shall be deemed to have adopted a
77 grievance procedure which is consistent with the provisions of Chapter 30 (§ 2.2-3000 et seq.) of Title
78 2.2 and any regulations adopted pursuant thereto for so long as the locality remains in noncompliance.
79 The locality shall provide its employees with copies of the applicable grievance procedure upon request.
80 The term "grievance" as used herein shall not be interpreted to mean negotiations of wages, salaries, or
81 fringe benefits.

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

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

89 1. Definition of grievance. A grievance shall be a complaint or dispute by an employee relating to
90 his employment, including but not necessarily limited to (i) disciplinary actions, including dismissals,
91 disciplinary demotions, and suspensions, provided that dismissals shall be grievable whenever resulting
92 from formal discipline or unsatisfactory job performance; (ii) the application of personnel policies,
93 procedures, rules and regulations, including the application of policies involving matters referred to
94 subdivision 2 (iii) below; (iii) discrimination *in violation of §15.2-1500.1 on the basis of race,*
95 ~~color, creed, religion, political affiliation, age, disability, national origin or sex~~; and (iv) acts of
96 retaliation as the result of the use of or participation in the grievance procedure or because the employee
97 has complied with any law of the United States or of the Commonwealth, has reported any violation of
98 such law to a governmental authority, has sought any change in law before the Congress of the United
99 States or the General Assembly, or has reported an incidence of fraud, abuse, or gross mismanagement.
100 For the purposes of clause (iv) there shall be a rebuttable presumption that increasing the penalty that is
101 the subject of the grievance at any level of the grievance shall be an act of retaliation.

102 2. Local government responsibilities. Local governments shall retain the exclusive right to manage
103 the affairs and operations of government. Accordingly, the following complaints are nongrievable: (i)
104 establishment and revision of wages or salaries, position classification or general benefits; (ii) work
105 activity accepted by the employee as a condition of employment or work activity which may reasonably
106 be expected to be a part of the job content; (iii) the contents of ordinances, statutes or established
107 personnel policies, procedures, rules and regulations; (iv) failure to promote except where the employee
108 can show that established promotional policies or procedures were not followed or applied fairly; (v) the
109 methods, means and personnel by which work activities are to be carried on; (vi) except where such
110 action affects an employee who has been reinstated within the previous six months as the result of the
111 final determination of a grievance, termination, layoff, demotion or suspension from duties because of
112 lack of work, reduction in work force, or job abolition; (vii) the hiring, promotion, transfer, assignment
113 and retention of employees within the local government; and (viii) the relief of employees from duties
114 of the local government in emergencies. In any grievance brought under the exception to clause (vi) of
115 this subdivision, the action shall be upheld upon a showing by the local government that: ~~(i)~~ (a) there
116 was a valid business reason for the action and ~~(ii)~~ (b) the employee was notified of the reason in writing
117 prior to the effective date of the action.

118 3. Coverage of personnel.

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

- 121 (1) Appointees of elected groups or individuals;
 122 (2) Officials and employees who by charter or other law serve at the will or pleasure of an
 123 appointing authority;
 124 (3) Deputies and executive assistants to the chief administrative officer of a locality;
 125 (4) Agency heads or chief executive officers of government operations;
 126 (5) Employees whose terms of employment are limited by law;
 127 (6) Temporary, limited term and seasonal employees;
 128 (7) Law-enforcement officers as defined in Chapter 5 (§ 9.1-500 et seq.) of Title 9.1 whose grievance
 129 is subject to the provisions of Chapter 10.1 and who have elected to proceed pursuant to those
 130 provisions in the resolution of their grievance, or any other employee electing to proceed pursuant to
 131 any other existing procedure in the resolution of his grievance.
 132 b. Notwithstanding the exceptions set forth in subdivision 3 a above, local governments, at their sole
 133 discretion, may voluntarily include employees in any of the excepted categories within the coverage of
 134 their grievance procedures.
 135 c. The chief administrative officer of each local government, or his designee, shall determine the
 136 officers and employees excluded from the grievance procedure, and shall be responsible for maintaining
 137 an up-to-date list of the affected positions.
 138 4. Grievance procedure availability and coverage for employees of community services boards,
 139 redevelopment and housing authorities, and regional housing authorities. Employees of community
 140 services boards, redevelopment and housing authorities created pursuant to § 36-4, and regional housing
 141 authorities created pursuant to § 36-40 shall be included in (i) a local governing body's grievance
 142 procedure or personnel system, if agreed to by the department, board, or authority and the locality or (ii)
 143 a grievance procedure established and administered by the department, board or authority which is
 144 consistent with the provisions of Chapter 30 (§ 2.2-3000 et seq.) of Title 2.2 and any regulations
 145 promulgated pursuant thereto. If a department, board or authority fails to establish a grievance procedure
 146 pursuant to clause (i) or (ii), it shall be deemed to have adopted a grievance procedure which is
 147 consistent with the provisions of Chapter 30 (§ 2.2-3000 et seq.) of Title 2.2 and any regulations
 148 adopted pursuant thereto for so long as it remains in noncompliance.
 149 5. General requirements for procedures.
 150 a. Each grievance procedure shall include not more than four steps for airing complaints at
 151 successively higher levels of local government management, and a final step providing for a panel
 152 hearing or a hearing before an administrative hearing officer upon the agreement of both parties.
 153 b. Grievance procedures shall prescribe reasonable and specific time limitations for the grievant to
 154 submit an initial complaint and to appeal each decision through the steps of the grievance procedure.
 155 c. Nothing contained in this section shall prohibit a local government from granting its employees
 156 rights greater than those contained herein, provided such grant does not exceed or violate the general
 157 law or public policy of the Commonwealth.
 158 6. Time periods.
 159 a. It is intended that speedy attention to employee grievances be promoted, consistent with the ability
 160 of the parties to prepare for a fair consideration of the issues of concern.
 161 b. The time for submitting an initial complaint shall not be less than 20 calendar days after the event
 162 giving rise to the grievance, but local governments may, at their option, allow a longer time period.
 163 c. Limits for steps after initial presentation of grievance shall be the same or greater for the grievant
 164 than the time which is allowed for local government response in each comparable situation.
 165 d. Time frames may be extended by mutual agreement of the local government and the grievant.
 166 7. Compliance.
 167 a. After the initial filing of a written grievance, failure of either party to comply with all substantial
 168 procedural requirements of the grievance procedure, including the panel or administrative hearing,
 169 without just cause shall result in a decision in favor of the other party on any grievable issue, provided
 170 the party not in compliance fails to correct the noncompliance within five workdays of receipt of written
 171 notification by the other party of the compliance violation. Such written notification by the grievant shall
 172 be made to the chief administrative officer, or his designee.
 173 b. The chief administrative officer, or his designee, at his option, may require a clear written
 174 explanation of the basis for just cause extensions or exceptions. The chief administrative officer, or his
 175 designee, shall determine compliance issues. Compliance determinations made by the chief
 176 administrative officer shall be subject to judicial review by filing petition with the circuit court within
 177 30 days of the compliance determination.
 178 8. Management steps.
 179 a. The first step shall provide for an informal, initial processing of employee complaints by the
 180 immediate supervisor through a nonwritten, discussion format.
 181 b. Management steps shall provide for a review with higher levels of local government authority

182 following the employee's reduction to writing of the grievance and the relief requested on forms
183 supplied by the local government. Personal face-to-face meetings are required at all of these steps.

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

190 9. Qualification for panel or administrative hearing.

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

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

215 10. Final hearings.

216 a. Qualifying grievances shall advance to either a panel hearing or a hearing before an administrative
217 hearing officer, as set forth in the locality's grievance procedure, as described below:

218 (1) If the grievance procedure adopted by the local governing body provides that the final step shall
219 be an impartial panel hearing, the panel may, with the exception of those local governments covered by
220 subdivision a (2) of this subsection, consist of one member appointed by the grievant, one member
221 appointed by the agency head and a third member selected by the first two. In the event that agreement
222 cannot be reached as to the final panel member, the chief judge of the circuit court of the jurisdiction
223 wherein the dispute arose shall select the third panel member. The panel shall not be composed of any
224 persons having direct involvement with the grievance being heard by the panel, or with the complaint or
225 dispute giving rise to the grievance. Managers who are in a direct line of supervision of a grievant,
226 persons residing in the same household as the grievant and the following relatives of a participant in the
227 grievance process or a participant's spouse are prohibited from serving as panel members: spouse, parent,
228 child, descendants of a child, sibling, niece, nephew and first cousin. No attorney having direct
229 involvement with the subject matter of the grievance, nor a partner, associate, employee or co-employee
230 of the attorney shall serve as a panel member.

231 (2) If the grievance procedure adopted by the local governing body provides for the final step to be
232 an impartial panel hearing, local governments may retain the panel composition method previously
233 approved by the Department of Employment Dispute Resolution and in effect as of the enactment of this
234 statute. Modifications to the panel composition method shall be permitted with regard to the size of the
235 panel and the terms of office for panel members, so long as the basic integrity and independence of
236 panels are maintained. As used in this section, the term "panel" shall include all bodies designated and
237 authorized to make final and binding decisions.

238 (3) When a local government elects to use an administrative hearing officer rather than a
239 three-person panel for the final step in the grievance procedure, the administrative hearing officer shall
240 be appointed by the Executive Secretary of the Supreme Court of Virginia. The appointment shall be
241 made from the list of administrative hearing officers maintained by the Executive Secretary pursuant to
242 § 2.2-4024 and shall be made from the appropriate geographical region on a rotating basis. In the
243 alternative, the local government may request the appointment of an administrative hearing officer from

the Department of Employment Dispute Resolution. If a local government elects to use an administrative hearing officer, it shall bear the expense of such officer's services.

(4) When the local government uses a panel in the final step of the procedure, 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 hearing. Such representatives may examine, cross-examine, question and present evidence on behalf of the grievant or respondent before the panel or hearing officer without being in violation of the provisions of § 54.1-3904.

(6) The decision of the panel or hearing officer 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 or hearing officer 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 and administrative hearings.

Unless otherwise provided by law, local governments shall adopt rules for the conduct of panel or administrative 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 neither the panels nor the hearing officer have authority to formulate policies or procedures or to alter existing policies or procedures;

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

(4) That panels and hearing officers 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 or hearing officer and the parties, except by mutual consent of the parties;

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

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

(8) That the panel or hearing officer's 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 final hearing 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 hearing decision.

B. Notwithstanding the contrary provisions of this section, a final hearing 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 decision of the panel or hearing officer 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; *in violation of the Equal Protection Clause of the United States Constitution, Article I, Section 11 of the Virginia Constitution or the Virginia Human Rights Act, §§2.2-3900, et seq. because of such individual's race, color, religion, sex 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 *in violation of the Equal Protection Clause of the United States Constitution, Article 1, Section 11 of the Virginia Constitution or the Virginia Human Rights Act, §§2.2-3900, et seq.*; ~~because of the individual's race, color, religion, sex or, national origin.~~

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 in violation of the Equal Protection Clause of the United States Constitution, Article 1, Section 11 of the Virginia Constitution or the Virginia Human Rights Act, §§2.2-3900, et seq.

§ 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 *in violation of § 22.1-295.2 on the basis of race, color, creed, political affiliation, handicap, age, national origin or sex.* 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 insufficient funding, (vi) hiring, transfer, assignment and retention of teachers within the school division, (vii) suspension from duties in emergencies, or (viii) 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, the rules, regulations, policies, or procedures as written or established by the school board is grievable.

"Dismissal" means the dismissal of any teacher during the term of such teacher's contract and the nonrenewal of the contract of a teacher on continuing contract.