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HOUSE BILL NO. 692

Offered January 11, 2012

Prefiled January 11, 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.

Patrons—Plum and Scott, J.M.

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 based on race, color, religion, national origin, political affiliation, sex, pregnancy, childbirth or related medical conditions, age, marital status, disability, sexual orientation, or status as a veteran.

§ 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, marital status, pregnancy, childbirth or related medical conditions, sexual orientation, or status as a veteran; (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~~ 30 days of receipt

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59 of such records, the court, sitting without a jury, shall hear the appeal on the record and such additional
60 evidence as may be necessary to resolve any controversy as to the correctness of the record. The court,
61 in its discretion, may receive such other evidence as the ends of justice require. The court may affirm
62 the decision of the Director or may reverse or modify the decision. The decision of the court shall be
63 rendered no later than the fifteenth day from the date of the conclusion of the hearing. The decision of
64 the court shall be final and shall not be appealable. The circuit court hearing shall be at no cost to the
65 Commonwealth or the grievant.

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

71 § 15.2-1500.1. *Employment discrimination prohibited.*

72 *No department, office, board, commission, agency, or instrumentality of local government shall*
73 *discriminate in employment based on race, color, religion, national origin, political orientation, sex,*
74 *pregnancy, childbirth or related medical conditions, age, marital status, disability, sexual orientation, or*
75 *status as a veteran.*

76 § 15.2-1507. Provision of grievance procedure; training programs.

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

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

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

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

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

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

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

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

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

193 9. Qualification for panel or administrative hearing.

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

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

218 10. Final hearings.

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

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

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

241 (3) When a local government elects to use an administrative hearing officer rather than a
242 three-person panel for the final step in the grievance procedure, the administrative hearing officer shall
243 be appointed by the Executive Secretary of the Supreme Court of Virginia. 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. In the 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~~ 10 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, because of such individual's race, color, religion, sex, *pregnancy, childbirth or related*

305 *medical conditions, national origin, political affiliation, age, marital status, disability, sexual orientation,*
 306 *status as a veteran, or national origin; or*

307 2. To limit, segregate, or classify his appointees, employees or applicants for appointment or
 308 employment in any way which would deprive or tend to deprive any individual of employment
 309 opportunities or otherwise adversely affect his status as an employee, because of the individual's race,
 310 color, religion, sex, *pregnancy, childbirth or related medical conditions, national origin, political*
 311 *affiliation, age, marital status, disability, sexual orientation, status as a veteran, or national origin.*

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

317 C. With regard to notices and advertisements:

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

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

332 D. Complaints regarding violations of subsection A ~~of this section~~ may be made to the Virginia
 333 Council on Human Rights. The Council shall have the authority to exercise its powers as outlined in
 334 § 2.2-2634.

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

337 § 22.1-295.2. *Employment discrimination prohibited.*

338 *No school board or any agent or employee thereof shall discriminate in employment based on race,*
 339 *color, religion, national origin, political affiliation, sex, pregnancy, childbirth or related medical*
 340 *conditions, age, marital status, disability, sexual orientation, or status as a veteran.*

341 § 22.1-306. Definitions.

342 As used in this article:

343 "Grievance" means a complaint or dispute by a teacher relating to his or her employment including,
 344 but not necessarily limited to: (i) disciplinary action including dismissal or placing on probation; (ii) the
 345 application or interpretation of: (a) personnel policies, (b) procedures, (c) rules and regulations, (d)
 346 ordinances and (e) statutes; (iii) acts of reprisal against a teacher for filing or processing a grievance,
 347 participating as a witness in any step, meeting or hearing relating to a grievance, or serving as a
 348 member of a fact-finding panel; and (iv) complaints of discrimination on the basis of race, color, ~~ered,~~
 349 *religion, political affiliation, handicap disability, age, national origin or, sexual orientation, sex,*
 350 *pregnancy, childbirth or related medical conditions, marital status, or status as a veteran.* Each school
 351 board shall have the exclusive right to manage the affairs and operations of the school division.
 352 Accordingly, the term "grievance" shall not include a complaint or dispute by a teacher relating to ~~(i)~~
 353 ~~(1)~~ establishment and revision of wages or salaries, position classifications or general benefits, ~~(ii)~~ ~~(2)~~
 354 suspension of a teacher or nonrenewal of the contract of a teacher who has not achieved continuing
 355 contract status, ~~(iii)~~ ~~(3)~~ the establishment or contents of ordinances, statutes or personnel policies,
 356 procedures, rules and regulations, ~~(iv)~~ ~~(4)~~ failure to promote, ~~(v)~~ ~~(5)~~ discharge, layoff or suspension
 357 from duties because of decrease in enrollment, decrease in enrollment or abolition of a particular subject
 358 or insufficient funding, ~~(vi)~~ ~~(6)~~ hiring, transfer, assignment and retention of teachers within the school
 359 division, ~~(vii)~~ ~~(7)~~ suspension from duties in emergencies, or ~~(viii)~~ ~~(8)~~ the methods, means and personnel
 360 by which the school division's operations are to be carried on.

361 While these management rights are reserved to the school board, failure to apply, where applicable,
 362 the rules, regulations, policies, or procedures as written or established by the school board is grievable.

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