

**WEST VIRGINIA**  
**SECRETARY OF STATE**  
**KEN HECHLER**  
**ADMINISTRATIVE LAW DIVISION**

Form #5

Do Not Mark In this Box

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1989 JAN -6 PM 4: 01

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF AGENCY ADOPTION OF A PROCEDURAL OR INTERPRETIVE RULE  
OR A LEGISLATIVE RULE EXEMPT FROM LEGISLATIVE REVIEW**

AGENCY: W.Va. Education and State Employees Grievance Board TITLE NUMBER: 156

CITE AUTHORITY: W.Va. Code §§29A-3-1 et seq., 18-29-5, 29-6A-5

RULE TYPE: PROCEDURAL  INTERPRETIVE

EXEMPT LEGISLATIVE RULE

CITE STATUTE(S) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW

AMENDMENT TO AN EXISTING RULE: YES , NO

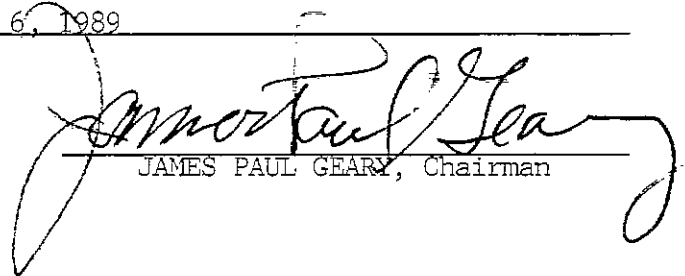
IF YES, SERIES NUMBER OF RULE BEING AMENDED: ~~156~~

TITLE OF RULE BEING AMENDED: \_\_\_\_\_

IF NO, SERIES NUMBER OF NEW RULE BEING ADOPTED: 1

TITLE OF RULE BEING ADOPTED: \_\_\_\_\_

THE ABOVE RULE IS HEREBY ADOPTED AND FILED WITH THE SECRETARY OF STATE. THE  
EFFECTIVE DATE OF THIS RULE IS February 6, 1989

  
JAMES PAUL GEARY, Chairman

PROCEDURAL RULES  
WEST VIRGINIA EDUCATION AND STATE EMPLOYEES GRIEVANCE BOARD

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Section I-GENERAL INFORMATION

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

1.1:Scope

These Rules are procedural; their purpose is to inform parties to grievances filed by certain West Virginia education and state employees as to certain facts about Level Four and related aspects of the grievance procedure. These Rules shall be construed to allow the West Virginia Education and State Employees Grievance Board (hereafter, "the Board") to do substantial justice; therefore, for good cause, the Board may, at any time, suspend the requirements of any of these Rules in particular grievances.

1.2:Related law

These Rules relate to West Virginia law, specifically including W.Va. Code §§18-29-1 et seq., 29-6A-1 et seq., which are incorporated by reference herein and which are Appendix A and B, respectively, to these Rules. In the event that the Code provisions referenced in these Rules are amended, these Rules will likewise be amended to conform thereto. These Rules are intended to be supplementary to the pertinent Code provisions.

1.3:Authority

W.Va. Code §§18-29-5, 29-6A-5 grant the Board the authority to promulgate these Rules.

1.4:Filing date

These Rules were filed with the Office of the Secretary of State of West Virginia on January 6, 1989.

1.5:Effective date

These Rules shall be effective February 6, 1989, and shall apply to all grievances filed before that date but still pending final administrative disposition and to all grievances filed on or after that date.

1.6:Severability

Should one or more of these Rules be declared invalid by an appropriate authority, such declaration shall not be construed to invalidate any other of these Rules.

### 1.7:Delegation of authority

The Board may delegate any of its powers or duties to its Hearing Examiners and/or its other employees or agents, except as contrary to law.

## Section II-DEFINITIONS

### 2.1:Statutory definitions

Definitions appearing in W.Va. Code §§18-29-2, 29-6A-2 apply to these Rules.

### 2.2:Additional definitions

(a)To "file" is to ensure that documents or articles are received by the Board in its main offices at 240 Capitol Street, Suite 508, Charleston, West Virginia, 25301;

(b)To "deliver" is to ensure that documents or articles are received by a person or his/her agent(s), which may be accomplished by any commonly accepted means, including, but not limited to, the United States mail;

(c)A "subpoena" is an official document requiring the appearance of an individual at a given time and place;

(d)A "subpoena duces tecum" is a subpoena which additionally requires the individual named to bring a specific item or items with him/her.

## Section III-LEVELS ONE, TWO AND THREE

### 3.1:Forms

Each governing board (education) and employer (state) should, within ninety days of the effective date of these Rules, adopt one official form for the initiation of grievances at Levels One, Two and Three. This form should be made available to an employee, upon his/her request, by his/her immediate supervisor. A sample form, which all governing boards and employers are strongly urged to adopt, is Appendix C to these Rules.

### 3.2:Written procedures

Each governing board (education) and employer (state) should establish written procedures relating to employee grievances at Levels One, Two and Three. These procedures should meet and inform employees of the

provisions of these Rules and of W.Va. Code §§18-29-3 et seq. and 18A-2-8 (education), and 29-6A-3 et seq. (state). Code §18A-2-8 is incorporated by reference herein and is Appendix D to these Rules. Copies of these written procedures should be made available to all employees within ninety days of the effective date of these Rules. Thereafter, each newly-hired employee should be given a copy of these written procedures upon the commencement of his/her employment.

#### SECTION IV-LEVEL FOUR

##### 4.1:Form

The official form to be used for the filing of a grievance at Level Four is Appendix C to these Rules.

##### 4.2:Assignment of Hearing Examiner, Etc.

Upon the proper filing of a Level Four grievance, the Board shall assign the matter to a Hearing Examiner and all parties shall be notified of this assignment. Thereafter, all documents or other correspondence pertaining to the grievance shall be delivered to the assigned Hearing Examiner, as well as to all other parties to the grievance or their representatives, if any.

##### 4.3:Ex parte communication prohibited

No person shall confer or correspond with any member of the Board, its staff, including its Hearing Examiners, or its agents, concerning the merits or substance of a grievance, unless all parties to the grievance are present.

##### 4.4:Subpoenas and subpoenas duces tecum

Subpoenas and subpoenas duces tecum shall be issued by the Board to any party to a grievance upon written request of that party, in the discretion of the Hearing Examiner and in compliance with W.Va. Code §29A-5-1(b). Such written request shall include the full name and address of each person to be subpoenaed (and for subpoenas duces tecum, a complete description of all materials to be brought by the individual named), together with a statement accepting responsibility for service and any costs (including applicable witness and mileage fees, which should be paid at the same rate in effect in the circuit courts of West Virginia) incurred relative thereto. No subpoena or subpoena duces tecum will be issued unless a written request for same has been delivered to the Hearing Examiner no less than six work days prior to the scheduled hearing.

#### 4.5: Motions

Except as provided in this Rule, all motions shall be in writing and shall be delivered, as soon as possible after the reasons for the motion arise, to the Hearing Examiner and to all other parties and their representatives, if any. A certificate of service must be attached to all motions filed, indicating the names and addresses of all persons to whom copies of the motion were delivered. Responses to the motion shall be in writing and shall be delivered to the Hearing Examiner and to all other parties and their representatives as soon as possible thereafter. A certificate of service, as above, must also be attached to all responses to motions.

Only if a situation necessitating a motion arises immediately before, or during, a hearing may an oral motion be made at the hearing. The movant shall be prepared to state cogent reasons as to why the motion was not made sooner. Further, the movant shall be prepared to proceed with the hearing if the motion is denied and the granting of the motion would have operated to delay the hearing.

All motions shall be accompanied by a concise statement of its basis, both legal and factual. Motions not timely made in the determination of the Hearing Examiner may be denied on that basis alone.

#### 4.6: Continuances

Any party may move to continue (postpone) hearings or other proceedings related to a grievance. Motions for continuance will be considered only in accordance with Rule 4.5 and will be granted only for good cause shown, in the discretion of the Hearing Examiner. Also for good cause, the Hearing Examiner, upon his/her own motion, may continue hearings or other proceedings.

#### 4.7: Remand

Any party may move to remand (return to a lower level of the grievance procedure) a grievance. Motions for remand will be considered only in accordance with Rule 4.5 and will be granted only for good cause shown, in the discretion of the Hearing Examiner. Also for good cause, the Hearing Examiner, upon his/her own motion, may remand a grievance.

#### 4.8: Recusal

Any party may move to recuse (disqualify) the Hearing Examiner assigned to a grievance. Motions for recusal will be considered only in accordance with Rule 4.5 and will be granted only for good cause shown, in the discretion of the Hearing Examiner. A motion for recusal

shall not operate to automatically continue any hearing or other action on the grievance, provided that any party may make a separate motion for the continuance of the hearing or other action until such time as the motion for recusal is resolved.

The Hearing Examiner's decision on a motion to recuse may be appealed to the Board or its Chairman by any party to the grievance, in accordance with Rule 4.5. Such appeal shall operate to automatically continue any hearing or other action on the grievance. The decision of the Board or its Chairman on the appeal is not an action subject to further appeal or review prior to the disposition of the grievance by the Board; therefore, once the recusal matter is finally decided by the Board or its Chairman, the Board will take such action as is consistent with the orderly and timely disposition of the grievance.

#### 4.9: Failure to state a claim

A grievance may be dismissed, in the discretion of the hearing examiner, if no claim upon which relief can be granted is stated or a remedy wholly unavailable to the grievant is requested.

#### 4.10: Discovery

The parties are encouraged to participate in informal discovery between or among themselves. This discovery may include, but is not limited to, exchanging a list of proposed witnesses, and a synopsis of each witness's expected testimony; a statement of issues involved in the grievance; proposed findings of fact and conclusions of law; proposed settlement terms; other evidence; etc.

Under specific circumstances, certain materials must be produced, as provided by W.Va. Code §§18-29-6, 29-6A-6.

#### 4.11: Joinder

Any party may move to join (or add as a party to the grievance) a person or entity necessary to the final disposition of the grievance, in accordance with Rule 4.5. In addition, the Hearing Examiner may, on his/her own motion, join a person or entity necessary to the final disposition of the grievance.

#### 4.12: Failure to pursue

When the parties have made request for, and the Board has allowed, a grievance to be held in abeyance, and there has been no action reported to the Board for six

months, the Board will send all parties a letter, by certified mail, stating that the case will be dismissed from the docket of the Board thirty calendar days from the date of the letter unless any party objects. If no timely written objection is received by the Board, the Board will enter an order of dismissal; if, however, the Board receives timely written objection from any party to the dismissal, the grievance will promptly be scheduled for hearing or other action will be taken consistent with the orderly disposition of the grievance.

#### 4.13:Hearings in general

Hearing Examiners shall have full and complete authority to preside over, and control all aspects of, a hearing.

If, in the determination of the Hearing Examiner, an individual present at a hearing is engaging in disruptive conduct, the Hearing Examiner may, in his/her discretion, admonish the individual to cease such conduct; exclude the individual from the remainder of the hearing; adjourn the hearing; or take other action consistent with the orderly and timely disposition of the grievance.

#### 4.14:Location of hearing

All Level Four hearings shall be conducted in the offices of the Board; provided that, upon written motion, in accordance with Rule 4.5, and for good cause shown, the Hearing Examiner may, in his/her discretion, conduct the hearing in the county where the grievance arose, or in another location. In such cases, the party or parties requesting the change in hearing site shall be responsible, at no expense to the Board, for providing the following: a suitable hearing room; a separate area for witnesses; such other facilities, equipment or personnel as deemed necessary, and requested by, the Hearing Examiner; and a certified copy of the transcript of the hearing, and delivery of the same to the Hearing Examiner within twenty days after the hearing. In addition, the Hearing Examiner, upon his/her own motion, may conduct the hearing in the county where the grievance arose, or in another location.

#### 4.15:Final dispositions

A copy of the decision or order constituting the final administrative disposition of a grievance will be delivered to each party to the grievance and his/her representative, if any, as soon as possible after the decision or order is entered.

Grievances may be disposed of in three ways: decision on the merits; nonappealable dismissal; and appealable dismissal.

a) **Decisions on the merits** result in grievances being granted or denied, or granted in part and denied in part. All such decisions are maintained by the staff of the Board and are transmitted monthly to the Office of the Secretary of State, Capitol Complex, Charleston, West Virginia, 25305. Copies of these decisions may be obtained from that office, at cost. Decisions on the merits in education cases are appealable to the Kanawha County Circuit Court, or to the circuit court serving the county where the grievance arose. Decisions on the merits in state cases are appealable only to the circuit court serving the county where the grievance arose.

b) **Nonappealable dismissals** are those grievances dismissed for the following reasons: settlement of the matter between or among all grievants; withdrawal of all grievants from the grievance; and, in accordance with Rule 4.12, failure to pursue.

c) **Appealable dismissals** are those grievances dismissed for all other reasons, including, but not limited to, failure to state a claim. Such dismissals are appealable in the same manner as decisions on the merits.

#### 4.16: Appeals to circuit court

In every matter appealed from this Board to circuit court, the appealing party shall furnish the Board with a copy of the notice of appeal and the circuit court docket number. Upon final decision by the circuit court, the party prevailing on the appeal shall furnish the Board with a copy of that decision and any accompanying order within twenty days of the receipt of same.

#### 4.17: Burden of proof

The grievant always has the burden of proving his/her case by a preponderance of the evidence, with the exception of disciplinary matters. In such cases, the burden of proving, by a preponderance of the evidence, that the action taken against the grievant was justified, is upon the governing board (education) or employer (state).

#### 4.18: Advisory opinions

The Board will, under no circumstances, issue an advisory opinion, i.e., an opinion on an issue not directly before the Board in a grievance.

#### 4.19:Registration of employee organizations

All labor unions or other organizations representing West Virginia education and/or state employees and desiring to appear/before the Board through its agent(s) must register with the Board at its main office in Charleston.

#### APPENDICES

- Appendix A - W.Va. Code §§18-29-1 et seq.
- Appendix B - W.Va. Code §§29-6A-1 et seq.
- Appendix C - Form for initiation of grievance
- Appendix D - W.Va. Code §18A-2-8

**WEST VIRGINIA EDUCATION AND STATE EMPLOYEES GRIEVANCE BOARD**

**GRIEVANCE FORM**  
**Levels I, II, III, IV**  
(Circle One)

Grievant's Name (if more than one Grievant, use reverse)

Grievant's Representative and Organization

Street or Route No.

Street or Route No.

City, State, Zip Code

City, State, Zip Code

Grievant's Phone No.

Representative's Phone No.

v.

Agency/Board of Education/Institution

**STATEMENT OF GRIEVANCE** (Provide a brief but complete description of the grievable event and the relief you are seeking; use the reverse of this form, if necessary):

**PROCEDURAL SUMMARY:**

A level one decision was issued by \_\_\_\_\_ on \_\_\_\_\_  
(immediate supervisor) (date)

and I hereby appeal this decision to level two.

A level two decision was issued by \_\_\_\_\_ on \_\_\_\_\_  
(Chief Admn./Superintendent) (date)

and I hereby appeal this decision to level three.

A level three decision was issued by \_\_\_\_\_ on \_\_\_\_\_  
(governing board/agency) (date)

and I hereby appeal this decision to level four.

**CHECK ONE:** \_\_\_\_\_ A hearing is requested.

\_\_\_\_\_ A decision may be made on the evidence presented at levels one through three.

**UPON FILING AT LEVEL FOUR THE GRIEVANT MUST:**

- \* (1) Forward a copy of this appeal to the chief administrator of the agency, board of education or institution and
- \* (2) Submit this form and all lower level responses to the

WEST VIRGINIA EDUCATION AND STATE EMPLOYEES GRIEVANCE BOARD  
240 Capitol Street, Suite 508  
Charleston, West Virginia 25301

Grievant's or Representative's Signature

Date

AMENDMENTS MADE TO PROPOSED PROCEDURAL RULES HIGHLIGHTED IN YELLOW

PROCEDURAL RULES  
WEST VIRGINIA EDUCATION AND STATE EMPLOYEES GRIEVANCE BOARD

Section I-GENERAL INFORMATION

1.1:Scope

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1.2:Related law

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## Section III-LEVELS ONE, TWO AND THREE

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provisions of these Rules and of W.Va. Code §§18-29-3 et seq. and 18A-2-8 (education), and 29-6A-3 et seq. (state). Code §18A-2-8 is incorporated by reference herein and is Appendix D to these Rules. Copies of these written procedures should be made available to all employees within ninety days of the effective date of these Rules. Thereafter, each newly-hired employee should be given a copy of these written procedures upon the commencement of his/her employment.

#### SECTION IV-LEVEL FOUR

##### 4.1:Form

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##### 4.2:Assignment of Hearing Examiner, Etc.

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#### 4.5: Motions

Except as provided in this Rule, all motions shall be in writing and shall be delivered, as soon as possible after the reasons for the motion arise, to the Hearing Examiner and to all other parties and their representatives, if any. A certificate of service must be attached to all motions filed, indicating the names and addresses of all persons to whom copies of the motion were delivered. Responses to the motion shall be in writing and shall be delivered to the Hearing Examiner and to all other parties and their representatives as soon as possible thereafter. A certificate of service, as above, must also be attached to all responses to motions.

Only if a situation necessitating a motion arises immediately before, or during, a hearing may an oral motion be made at the hearing. The movant shall be prepared to state cogent reasons as to why the motion was not made sooner. Further, the movant shall be prepared to proceed with the hearing if the motion is denied and the granting of the motion would have operated to delay the hearing.

All motions shall be accompanied by a concise statement of its basis, both legal and factual. Motions not timely made in the determination of the Hearing Examiner may be denied on that basis alone.

#### 4.6: Continuances

Any party may move to continue (postpone) hearings or other proceedings related to a grievance. Motions for continuance will be considered only in accordance with Rule 4.5 and will be granted only for good cause shown, in the discretion of the Hearing Examiner. Also for good cause, the Hearing Examiner, upon his/her own motion, may continue hearings or other proceedings.

#### 4.7: Remand

Any party may move to remand (return to a lower level of the grievance procedure) a grievance. Motions for remand will be considered only in accordance with Rule 4.5 and will be granted only for good cause shown, in the discretion of the Hearing Examiner. Also for good cause, the Hearing Examiner, upon his/her own motion, may remand a grievance.

#### 4.8: Recusal

Any party may move to recuse (disqualify) the Hearing Examiner assigned to a grievance. Motions for recusal will be considered only in accordance with Rule 4.5 and will be granted only for good cause shown, in the discretion of the Hearing Examiner. A motion for recusal

shall not operate to automatically continue any hearing or other action on the grievance, provided that any party may make a separate motion for the continuance of the hearing or other action until such time as the motion for recusal is resolved.

The Hearing Examiner's decision on a motion to recuse may be appealed to the Board or its Chairman by any party to the grievance, in accordance with Rule 4.5. Such appeal shall operate to automatically continue any hearing or other action on the grievance. The decision of the Board or its Chairman on the appeal is not an action subject to further appeal or review prior to the disposition of the grievance by the Board; therefore, once the recusal matter is finally decided by the Board or its Chairman, the Board will take such action as is consistent with the orderly and timely disposition of the grievance.

#### 4.9: Failure to state a claim

A grievance may be dismissed, in the discretion of the hearing examiner, if no claim upon which relief can be granted is stated or a remedy wholly unavailable to the grievant is requested.

#### 4.10: Discovery

The parties are encouraged to participate in informal discovery between or among themselves. This discovery may include, but is not limited to, exchanging a list of proposed witnesses, and a synopsis of each witness's expected testimony; a statement of issues involved in the grievance; proposed findings of fact and conclusions of law; proposed settlement terms; other evidence; etc.

Under specific circumstances, certain materials must be produced, as provided by W.Va. Code §§18-29-6, 29-6A-6.

#### 4.11: Joinder

Any party may move to join (or add as a party to the grievance) a person or entity necessary to the final disposition of the grievance, in accordance with Rule 4.5. In addition, the Hearing Examiner may, on his/her own motion, join a person or entity necessary to the final disposition of the grievance.

#### 4.12: Failure to pursue

When the parties have made request for, and the Board has allowed, a grievance to be held in abeyance, and there has been no action reported to the Board for six

months, the Board will send all parties a letter, by certified mail, stating that the case will be dismissed from the docket of the Board thirty calendar days from the date of the letter unless any party objects. If no timely written objection is received by the Board, the Board will enter an order of dismissal; if, however, the Board receives timely written objection from any party to the dismissal, the grievance will promptly be scheduled for hearing or other action will be taken consistent with the orderly disposition of the grievance.

#### 4.13:Hearings in general

Hearing Examiners shall have full and complete authority to preside over, and control all aspects of, a hearing.

If, in the determination of the Hearing Examiner, an individual present at a hearing is engaging in disruptive conduct, the Hearing Examiner may, in his/her discretion, admonish the individual to cease such conduct; exclude the individual from the remainder of the hearing; adjourn the hearing; or take other action consistent with the orderly and timely disposition of the grievance.

#### 4.14:Location of hearing

All Level Four hearings shall be conducted in the offices of the Board; provided that, upon written motion, in accordance with Rule 4.5, and for good cause shown, the Hearing Examiner may, in his/her discretion, conduct the hearing in the county where the grievance arose, or in another location. In such cases, the party or parties requesting the change in hearing site shall be responsible, at no expense to the Board, for providing the following: a suitable hearing room; a separate area for witnesses; such other facilities, equipment or personnel as deemed necessary, and requested by, the Hearing Examiner; and a certified copy of the transcript of the hearing, and delivery of the same to the Hearing Examiner within twenty days after the hearing. In addition, the Hearing Examiner, upon his/her own motion, may conduct the hearing in the county where the grievance arose, or in another location.

#### 4.15:Final dispositions

A copy of the decision or order constituting the final administrative disposition of a grievance will be delivered to each party to the grievance and his/her representative, if any, as soon as possible after the decision or order is entered.

Grievances may be disposed of in three ways: decision on the merits; nonappealable dismissal; and appealable dismissal.

a) **Decisions on the merits** result in grievances being granted or denied, or granted in part and denied in part. All such decisions are maintained by the staff of the Board and are transmitted monthly to the Office of the Secretary of State, Capitol Complex, Charleston, West Virginia, 25305. Copies of these decisions may be obtained from that office, at cost. Decisions on the merits in education cases are appealable to the Kanawha County Circuit Court, or to the circuit court serving the county where the grievance arose. Decisions on the merits in state cases are appealable only to the circuit court serving the county where the grievance arose.

b) **Nonappealable dismissals** are those grievances dismissed for the following reasons: settlement of the matter between or among all grievants; withdrawal of all grievants from the grievance; and, in accordance with Rule 4.12, failure to pursue.

c) **Appealable dismissals** are those grievances dismissed for all other reasons, including, but not limited to, failure to state a claim. Such dismissals are appealable in the same manner as decisions on the merits.

#### 4.16: Appeals to circuit court

In every matter appealed from this Board to circuit court, the appealing party shall furnish the Board with a copy of the notice of appeal and the circuit court docket number. Upon final decision by the circuit court, the party prevailing on the appeal shall furnish the Board with a copy of that decision and any accompanying order within twenty days of the receipt of same.

#### 4.17: Burden of proof

The grievant always has the burden of proving his/her case by a preponderance of the evidence, with the exception of disciplinary matters. In such cases, the burden of proving, by a preponderance of the evidence, that the action taken against the grievant was justified, is upon the governing board (education) or employer (state).

#### 4.18: Advisory opinions

The Board will, under no circumstances, issue an advisory opinion, *i.e.*, an opinion on an issue not directly before the Board in a grievance.

**WEST VIRGINIA EDUCATION AND STATE EMPLOYEES GRIEVANCE BOARD**

**GRIEVANCE FORM**  
**Levels I, II, III, IV**  
(Circle One)

Grievant's Name (if more than one Grievant, use reverse)

Grievant's Representative and Organization

Street or Route No.

Street or Route No.

City, State, Zip Code

City, State, Zip Code

Grievant's Phone No.

Representative's Phone No.

v.

Agency/Board of Education/Institution

**STATEMENT OF GRIEVANCE** (Provide a brief but complete description of the grievable event and the relief you are seeking; use the reverse of this form, if necessary):

**PROCEDURAL SUMMARY:**

A level one decision was issued by \_\_\_\_\_ on \_\_\_\_\_  
(immediate supervisor) (date)

and I hereby appeal this decision to level two.

A level two decision was issued by \_\_\_\_\_ on \_\_\_\_\_  
(Chief Admn./Superintendent) (date)

and I hereby appeal this decision to level three.

A level three decision was issued by \_\_\_\_\_ on \_\_\_\_\_  
(governing board/agency) (date)

and I hereby appeal this decision to level four.

**CHECK ONE:**

\_\_\_\_\_ A hearing is requested.

\_\_\_\_\_ A decision may be made on the evidence presented at levels one through three.

**UPON FILING AT LEVEL FOUR THE GRIEVANT MUST:**

- \*(1) Forward a copy of this appeal to the chief administrator of the agency, board of education or institution and
- \*(2) Submit this form and all lower level responses to the

WEST VIRGINIA EDUCATION AND STATE EMPLOYEES GRIEVANCE BOARD  
240 Capitol Street, Suite 508  
Charleston, West Virginia 25301

Grievant's or Representative's Signature

Date



FILED  
1989 JAN -6 PM 4:01

Members  
James Paul Geary  
Chairman  
Orton A. Jones  
David L. White

WEST VIRGINIA EDUCATION AND  
STATE EMPLOYEES GRIEVANCE BOARD  
ARCH A. MOORE, JR.  
Governor

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE  
Capitol Street  
Suite 508  
Charleston, WV 25301  
Telephone: 348-3361

January 6, 1989

MEMORANDUM

TO: The Honorable Ken Hechler  
Secretary of State of West Virginia

FROM: West Virginia Education and State Employees Grievance  
Board, James Paul Geary, Chairman

Enclosed herewith, please find the Procedural Rules, West Virginia Education and State Employees Grievance Board, which are respectfully presented for filing with your Office in accordance with W.Va. Code §§29A-3-1 et seq., 18-29-5 and 29-6A-5.

For your convenience, this Grievance Board has prepared one clean copy of the Rules, a second copy with amendments to the Proposed Rules, made after the Code §29A-3-5 notice and comment period, highlighted in yellow and, pursuant to Code §29A-3-5, written reasons for these amendments. It is noted that a further notice and comment period is not required, since the amendments do not change the main purpose of the rules. Code §29A-3-8.

If you need anything further prior to the formal effectiveness of these Rules on February 6, 1988, please advise.



**Members**  
James Paul Geary  
Chairman  
Orton A. Jones  
David L. White

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STATE EMPLOYEES GRIEVANCE BOARD**

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240 Capitol Street  
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January 6, 1989

**M E M O R A N D U M**

TO: Whom it May Concern

FROM: West Virginia Education and State Employees Grievance  
Board, James Paul Geary, Chairman

RE: Amendments to Proposed Procedural Rules, and Reasons  
Therefor

Pursuant to W.Va. Code §29A-3-5, you are hereby advised of the amendments made to the Proposed Procedural Rules of this Grievance Board, which are highlighted in yellow on the attached copy of the final Procedural Rules, and the reasons for these amendments. It should be noted that the changes in the numbering system, which were made at the request of the Office of the Secretary of State, are not highlighted. Rule 1.01 is now Rule 1.1, Rule 1.02 is now Rule 1.2, and so on. The changes to Appendix C, which also are not highlighted, were made to provide more information to the parties and the Grievance Board and make the form easier to use.

HIGHLIGHTED AMENDMENTS, AND REASONS

a) Rule 2.2(d) - The addition of "or items" is simply for clarification that the subject of a subpoena duces tecum can be required to bring more than one item with him/her.

b) Rule 3.1 - The change of "one or more forms" to "one form" and the addition of "which all governing boards and employers are strongly urged to adopt" are an attempt to encourage the use of the document which is Appendix C to the Rules as the sole form for initiation of grievances at all levels. It also is in part a response to comments from the West Virginia Education Association and the American Federation of State, County & Municipal Employees (AFSCME).

c) Rule 4.2 - The change of "material" to "documents or other correspondence" is simply for clarification. The addition of "Etc." to the title of the Rule is in recognition of the requirement that documents and other correspondence should be directed to the assigned Hearing Examiner and the new phrase "as well as to all other parties to the grievance or their representative, if any." This last phrase was added to ensure that all parties and representatives in a given grievance will be aware of all correspondence with the Hearing Examiner generated by other parties or representatives in the case.

d) Rule 4.4 - The addition of "to any party to a grievance" is for clarification and was prompted by a comment from the West Virginia Department of Health regarding what person or entity has responsibility for effecting service of subpoenas and subpoenas duces tecum. The additions of "any" before "costs" and the parenthetical phrase regarding witness and mileage fees is for clarification and is in response to a suggestion from AFSCME.

e) Rule 4.14 - The deletion of the locations of the offices of the Grievance Board is in recognition that those locations may, at some point in time, change. The addition of the last sentence is to expressly grant the Hearing Examiner the discretion to move a Level IV hearing away from the offices of the Grievance Board on his/her own motion.

f) Rule 4.15(a) - The statement that decisions on state employee grievances may only be appealed to the Circuit Court of the county where the grievance arose is based on a strict reading of W.Va. Code §29-6A-7, and the principle of statutory interpretation that provides that if there is a conflict between two statutes, the one most specific controls (compare Code §§29-6A-7, 29A-5-4(b)).

g) Rule 4.16 - The changes are an effort to more equitably distribute responsibility in the relevant circumstances, and are based on comments from the Jackson County Board of Education.

RECEIVED

MAR 25 1991

WILLIAM H. HARRINGTON  
Chief of Staff



JUDY COOPER  
Director, Administrative Law  
W.Va. Education & State  
Emp. Grievance Board

DONALD R. WILKES  
Director, Corporations

SHEREE COHEN  
Special Assistant

(Plus all the volunteer  
help we can get)

KEN HECHLER  
Secretary of State  
MARY P. RATLIFF  
Deputy Secretary of State  
ROBERT E. WILKINSON  
Deputy Secretary of State  
CATHERINE FREROTTE  
Executive Assistant  
Telephone: (304) 345-4000  
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STATE OF WEST VIRGINIA

SECRETARY OF STATE

Charleston 25305

TO: Valerie Rist

AGENCY: Education & State Employees Grievance Board

FROM: JUDY COOPER, DIRECTOR ADMINISTRATIVE LAW DIVISION

DATE: March 22, 1991

THE ATTACHED RULE RECENTLY FILED BY YOUR AGENCY HAS BEEN ENTERED INTO OUR COMPUTER SYSTEM. PLEASE REVIEW, PROOF AND RETURN IT WITH ANY CORRECTIONS. IF THERE ARE NO CORRECTIONS, PLEASE SIGN THIS MEMO AND RETURN IT TO THIS OFFICE. YOU WILL BE SENT A FINAL VERSION OF YOUR RULE FOR YOUR RECORDS.

PLEASE RETURN EITHER THE CORRECTED RULE OR THIS FORM WITHIN TEN (10) WORKING DAYS OF THE DATE YOU RECEIVED THIS REQUEST. CALL IF YOU HAVE ANY QUESTIONS.

SERIES: 1 TITLE WV Ed & State Employees Grievance Board

\* THE ATTACHED RULE HAS BEEN REVIEWED AND IS CORRECT.

SIGNED: \_\_\_\_\_

TITLE OF PERSON SIGNING: \_\_\_\_\_

DATE: \_\_\_\_\_

\*\*\*\*\*

\* THE ATTACHED RULE HAS BEEN REVIEWED AND NEEDS CORRECTING. THE CORRECTIONS HAVE BEEN MARKED.

SIGNED: Valerie D. Rist

TITLE OF PERSON SIGNING: Admn. Asst.

DATE: April 14, 1991

*Correction noted pages 1, 2 & 3*