

**WEST VIRGINIA  
SECRETARY OF STATE  
BETTY IRELAND  
ADMINISTRATIVE LAW DIVISION**

Form #2

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CITY OF WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE**

AGENCY: West Virginia Public Employees Grievance Board TITLE NUMBER: 156

RULE TYPE: Procedural CITE AUTHORITY: W. Va. Code § 6C-3-4(b)

AMENDMENT TO AN EXISTING RULE: YES  NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: Series 1

TITLE OF RULE BEING AMENDED: West Virginia Education and State Employees Grievance Board

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: Series 1

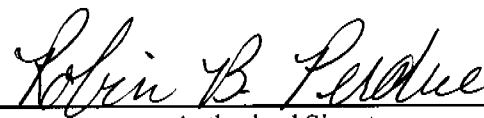
TITLE OF RULE BEING PROPOSED: West Virginia Public Employees Grievance Board

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON September 28, 2007 AT 5:00 p.m. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

808 Greenbrier Street

Charleston, WV 25311

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.



Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

#7.00

**156 CSR 1**  
**TITLE 156**  
**PROCEDURAL RULES**  
**WEST VIRGINIA ~~EDUCATION AND STATE~~ PUBLIC EMPLOYEES GRIEVANCE**  
**BOARD**  
**SERIES 1**

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SECRETARY OF STATE

**§156-1-1. General**

1.1. Scope - The following procedural rules set forth the practice and procedure established by the West Virginia ~~Education and State~~ Public Employees Grievance Board for carrying out its responsibilities to administer the grievance procedure for educational and state employees contained in W. Va. Code §§ ~~18-29-1, 6C-2-1~~, et seq. and W. Va. Code §§ ~~29-6A-1 6C-3-1~~, et seq. The Board is responsible for administering the grievance procedure at ~~Level Four~~ and has jurisdiction regarding procedural matters at ~~Levels Two and Three~~ all levels of both the grievance procedures. These rules apply to all grievances pending, and those filed after the effective date.

1.2. Authority - W. Va. Code §§ ~~18-29-5(a), and 29-6A-5(a)~~: 6C-3-4(b)

1.3. Filing Date - ~~November 3, 2004~~

1.4. Effective Date - ~~December 4, 2004~~

1.5. Liberal Construction - The provisions of these rules will be liberally construed to permit the Board to discharge its statutory functions and to secure just and expeditious determination of all matters before the Board; therefore, for good cause, the Board may, at any time, suspend the requirements of any of these rules.

1.6. Severability - If any section or subsection of these rules is determined to be invalid, it shall not be construed to invalidate any of the provisions not otherwise affected.

1.7. Availability of Rules - These rules are on file in the Office of the Secretary of State, and are available at each of the Board's offices, and at the Board's web site: [www.state.wv.us/admin/grievanc/grievanc.htm](http://www.state.wv.us/admin/grievanc/grievanc.htm) [pegboard.state.wv.us](http://pegboard.state.wv.us).

1.8. Delegation of Powers and Duties - Except where contrary to law, the Board may delegate any of its powers and duties to the director, administrative law judges, or other employees or agents of the Board. Pursuant to W. Va. Code §§ ~~18-29-1 6C-2-1~~, et seq., and ~~29-6A-1, et seq.~~, 6C-3-1, et seq., the administrative law judges are authorized to take any other action not inconsistent with the grievance procedure statutes and these rules.

**§156-1-2. Definitions**

2.1. All terms defined in W. Va. Code §§ ~~18-29-2 and 29-6A-2 6C-2-2~~ shall have the meanings therein ascribed to them for the purpose of these rules, ~~except the term "administrative law~~

judge" will be used, instead of the statutory term "hearing examiner". All other terms shall have the following meanings.

2.1.1. "File" or "filing" means to place an appropriate grievance form or letter evidencing an intent to appeal in an official depository of the United States Postal Service, postage prepaid, and addressed to: 1) the Board's main offices at 808 Greenbrier Street, Charleston, West Virginia 25311, and 2) the agency's chief administrator. If it is a state employee grievance, a third copy shall be sent to the Division of Personnel. A grievance may also be filed by hand-delivery or by facsimile transmission to the appropriate office. A hard copy of any grievance filed by facsimile must be mailed to the Board's main appropriate offices or by facsimile transmission to that office. ~~A hard copy of any grievance filed by facsimile must be mailed to the main office~~ within a reasonable time following the facsimile transmission, and ~~should~~ shall be identified as a duplicate. All grievance forms shall be date stamped when received. No grievance forms may be filed by interdepartmental mail. The key to assessing whether a grievance is properly filed is substantial compliance with the statute and rules. Within two days of receipt, the Grievance Board will e-mail the grievance docket number to the chief administrator.

2.1.2. "Service" or "Serve" means personal delivery, state interdepartmental mail delivery, or delivery by first class United States Postal Service mail, postage prepaid and addressed to the person to be served at his or her last known address. A Certificate of Service by the person making the service is to be attached to every document requiring service under these rules, indicating that copies have been served on all parties to the grievance or their representatives.

2.1.3. "Certificate of Service" means a certification by a party that on the stated date, he has hand-delivered, or placed in the state interdepartmental mail or in the United States mail, postage pre-paid, in a properly addressed envelope, a true copy of the document he is filing with the Board, for the other parties, or their representatives, at their last known address. (Appendix A is the Certificate of Service Form.)

2.1.4. "Subpoena" means an official document, issued by an administrative law judge or a ~~grievance evaluator~~ chief administrator in accordance with the West Virginia Administrative Procedures Act, W. Va. Code §§ 29A-5-1 et seq., requiring the appearance of an individual at a given time and place.

2.1.5. "Subpoena duces tecum" means an official document requiring that an individual named to appear at a given time and place must bring a specific document or documents.

2.1.6. "Motion" means an oral or written request for a ruling or order by an administrative law judge.

2.1.7. "Evidence" is any of the means through which an alleged fact is either proven or disproven, and includes testimony given under oath and documents.

~~2.1.8. "Grievance evaluator" means that individual or governing board authorized to render a decision on a grievance at Levels One, Two or Three of the grievance procedure. "Conference" is a meeting between the grievant and the chief administrator or designee to discuss the issues raised by the grievance, exchange information, and attempt to resolve the grievance. Other individuals may attend this meeting, as needed, to reach a resolution.~~

2.1.9. "Hearing" is a proceeding of relative formality with definite issues of fact or law to be tried, and in which witnesses and parties are entitled to be heard and evidence is submitted through witnesses and documents. A hearing is recorded by mechanical means. (Level One Hearing Guidelines are attached at Appendix B.)

### **§156-1-3. Levels One, Two and Three**

3.1. Forms - All ~~governing boards (education) and employers (state) should~~ shall use the applicable grievance form issued by the Grievance Board at all levels of the procedure, ~~but they may elect to use their own forms instead. The immediate supervisor . The chief administrator must provide a grievance form to an employee upon request. (Appendix B C is the Grievance Form for Education Employees. Appendix C is the Form for Higher Education Employees. Appendix D is the Form for State Employees. Copies of these forms can be obtained at the Grievance Board's web site.~~

3.2. Written procedures - All ~~governing boards (education) and employers (state) should establish written~~ shall provide a copy of the grievance procedures relating to employee grievances at Levels One, Two and Three. These procedures should inform employees of the provisions of these rules and of W. Va. Code §§ 18-29-3, et seq., 18A-2-8, and 29-6A-3, et seq. Copies of these procedures should be made available to all existing employees, and procedural rules to their employees. All newly-hired employees should be given a copy of these procedures documents upon commencement of their employment.

3.3. ~~Grievance Evaluator~~ Chief administrator authority - ~~Grievance evaluators~~ Chief administrators may issue subpoenas for witnesses and documents if a hearing is requested. ~~Grievance evaluators at Level Three~~ Additionally, chief administrators, in state employee grievances, may issue subpoenas for documents in the possession or control of the Division of Personnel in accordance with W. Va. Code §§ 29A-5-1 et seq. Documents must not be privileged, and must be relevant to a claim or defense in the pending grievance. In addition, documents must be redacted of confidential information; Confidential information in these documents, such as social security numbers and personal health information, must be redacted before disclosure. Further, a chief administrator may consolidate, for hearing or conference, grievances that are substantially similar, and waive grievances he/she is without authority to decide to level three, such as state compensation and classification grievances, and limit the number of relevant witnesses at hearing. If conflicts/questions arise on these issues, any party may submit the matter to the Board's chief administrative law judge for resolution.

3.4. ~~Grievance Evaluator~~ Chief administrator decisions - ~~Except for the informal attempt to resolve an educational employee grievance as provided for in W. Va. Code § 18-29-4(a),~~ Decisions rendered at all levels of the grievance procedure Level one decisions shall be dated, shall be in writing setting forth the decision or decisions and the reasons therefore, and shall be transmitted within the time prescribed to the grievant and any representative named in the grievance. If the grievant is denied the relief sought, the decision shall include the name and address of the individual at the next level to whom appeal may be made. The chief administrator is required to send the level one decision to the Board as well as a copy of the Cost Report Form, Appendix D.

3.5. Intervention - ~~Upon timely request in a grievance, filed by a state or higher education employee under W. Va. Code §§ 29-6A-1, et seq.,~~ an employee shall be allowed to intervene and become a party to a grievance at any level, when that employee claims the ruling in a grievance may substantially and adversely affect his or her rights or property and his or her interest is not adequately represented by the existing parties. Employers are encouraged to give notice to employees who could be substantially and adversely affected by the decision in a pending grievance that such employees may make a written request to intervene. Employees who may be directly affected by a ruling in a particular grievance are encouraged to intervene. An employee who intervenes in a grievance proceeding may make affirmative claims for relief in matters related to the grievance, as well as assert defensive claims, and may appeal to circuit court like any other party. (Appendix E is the Intervention Form.)

#### **§156-1-4. Level Four Two - Mediation**

~~4.1. Grievance Forms - Grievance forms that should be used at all levels in the procedure are attached.~~

~~4.2. Assignment of Administrative Law Judge - Upon proper filing of a Level Four grievance, the Board shall assign the grievance a docket number, and the employer will be directed to submit the complete record of the lower level proceedings, including the transcript and all exhibits, if any. If a Level Four hearing is requested, the parties will be directed to provide proposed hearing dates for the grievance hearing. Thereafter, the Board shall assign the matter to an administrative law judge and all parties will be notified of the assignment. Once the parties are notified of the assignment, all documents and correspondence are to be delivered to the assigned administrative law judge as provided for in Rule 2.1.2.~~

#### **4.1. Filing, Forms and Essential Matters**

4.1.1. After receiving a level one decision, the grievant may file to level two using the original grievance form, or a copy thereof, to request one of three alternative dispute resolution methods. The parties shall indicate on the grievance form which method is selected. If basic mediation by an administrative law judge is not selected, both parties are required to submit written documentation noting the agreement of all parties on the alternative selected. (See Appendix F - Mediation Agreement Form.)

4.1.2. If the parties agree that mediation would not be appropriate or helpful, they may request to waive mediation. The final decision on whether mediation should be waived rests with the administrative law judge. (See Appendix G for Mediation Waiver Form.)

4.1.3. If mediation by an administrative law judge is selected, the Grievance Board will request dates, and notify the parties of the time and date of the mediation. If the mediation was unsuccessful, the administrative law judge will issue an order stating this fact.

4.1.4. If private mediation is selected, the grievant is to inform the Grievance Board, in writing, of the outcome of this mediation. If a level three hearing is required, the grievant is required to file his/her request to come to level three on the original grievance form, or a copy thereof.

4.1.5. If mediation-arbitration by an administrative law judge is selected, the Board will request dates, and notify the parties of the time and date of the mediation-arbitration. Standard rules and guidelines governing mediation and arbitration will be followed during this process. If the mediation-arbitration was unsuccessful, the administrative law judge will issue an order stating this fact.

#### 4.2. General Provisions for Mediation and Mediation-Arbitration

4.2.1 All mediations and mediation-arbitrations shall be confidential, and the results of these proceedings shall not be released unless required by law.

4.2.2 Both the employee and the employer shall either appear at the mediation, or through a representative, who has the authority to resolve the grievance. If the grievance is settled through mediation, the parties are required to sign a settlement agreement, usually at the mediation session, reflecting the terms of the resolution. The parties may decide to write the settlement agreement after the mediation, but are required to inform the Board as soon as the document is signed and the settlement is finalized so the grievance can be dismissed from the Board's docket.

4.2.3. Both the employee and the employer shall either appear at the mediation-arbitration, or through a representative, who has the authority to resolve the grievance. If the grievance is resolved through mediation, the settlement agreement is to be signed by all parties. If the grievance is resolved through a decision, this decision shall be in writing and issued to the parties within the stated time frames.

#### **§156-1-5. Level Three**

**4.2: 5.1. Assignment of Administrative Law Judge - Upon proper filing of a level three ~~four~~ grievance, the Board shall assign the grievance a docket number, and the employer will be directed to submit the complete record of the lower level proceedings, including the transcript and all exhibits. If a level ~~four~~ three hearing is requested, the parties will be directed to provide proposed**

hearing dates for the grievance hearing. Thereafter, the Board shall assign the matter to an administrative law judge and all parties will be notified of the assignment. Once the parties are notified of the assignment, all documents and correspondence are to be delivered to the assigned administrative law judge as provided for in Rule 2.1.2.

5.1.1. By agreement, the parties may decide to submit the case on the record developed below. If the administrative law judge assigned to the case agrees, the parties will then be given the option to submit proposed Findings of Fact and Conclusions of Law within a designated time period.

~~4.3:~~ 5.2. Authority of Administrative Law Judge - Each administrative law judge has the authority and discretion to control the processing of each grievance assigned to him or /her and to take any such action considered appropriate consistent with the provisions of W. Va. Code §§~~18-29-5 and 29-6A-5~~ 6C-2-1, et seq.

~~4.4:~~ 5.3. Prehearing Conferences - As soon as practical after the grievance is assigned, the administrative law judge may conduct a prehearing conference with the parties and/or their representatives, in person or by telephone, to explore and resolve matters to expedite the grievance proceedings. Any pertinent matters involving the grievance can be discussed at that time. If the grievance has been filed directly to level three, as an expedited grievance, the administrative law judge may encourage the parties to mediate prior to a level three hearing. In the ALJ's administrative law judge's discretion, such conferences will be recorded by mechanical means.

~~4.4.1. The specific matters that may be addressed include: explaining the Board's procedures, particularly to employees representing themselves; identifying the issues to be decided in the grievance; discussing whether the case can be submitted for decision based upon the record made in the lower levels of the procedure; setting the date, time, place and estimated duration of the hearing; resolving any outstanding discovery issues and establishing discovery limits; discussing the law, standards of proof, rules of evidence and burdens of proof that are to apply to the grievance; exchanging stipulations and declarations regarding facts, exhibits, witnesses and other issues; identifying the names of witnesses, the scope of witness testimony and witness exclusion; discussing whether the case can be settled or should be mediated; determining the value of separating the grievance into phases, such as a default phase and a remedy phase; determining whether the hearing should be open to the public and press; and discussing any other issues relating to the grievance or the conduct of the grievance hearing. The administrative law judge may issue oral or written orders reflecting his or her decisions on the above matters and may conduct additional conferences when the need arises.~~

~~4.5:~~ 5.4. Ex Parte Communication - No person shall confer or correspond with any member of the Board, its administrative law judges, staff or agents, concerning the merits or substance of a pending grievance, unless all parties to the grievance are present.

~~4.5.1:~~ 5.4.1. Any ex parte communication made to an administrative law judge concerning the merits or substance of a grievance shall be promptly disclosed to the other parties and an opportunity for rebuttal allowed.

~~4.6:~~ 5.5. Subpoenas and subpoenas duces tecum - Parties who wish to obtain subpoenas to require the attendance and testimony of witnesses, or subpoenas requiring the production of documents, must file a written motion or request for subpoenas with the administrative law judge assigned to the grievance. The written request should be submitted as soon as possible, so that the subpoena can be served at least five days before to the scheduled hearing, as required by W. Va. Code § 29A-5-1(b). Subpoenas and subpoenas duces tecum will be issued in the discretion of the administrative law judge. The written request shall include the full name and address of each person to be subpoenaed (and for subpoenas duces tecum, a complete description of the document or item to be produced), together with a statement accepting responsibility for service, and for witness and mileage fees, if any. Witness and mileage fees shall be the same as are paid witnesses in the courts of this state. Subpoenas and subpoenas duces tecum may be enforced as provided in W. Va. Code § 29A-5-1(b). Administrative law judges shall have the authority to subpoena witnesses and documents for Level Three hearings in accordance with the provision of section one [§ 29A-5-1], article five, chapter twenty-nine-a of this code, upon the written request of any party to the grievance.

~~4.6.1:~~ 5.5.1. All parties shall provide the Board and all other parties with a list of the witnesses it intends to call at the ~~Level IV~~ level three hearing, whether subpoenaed or not, at least six days prior to the hearing.

~~4.6.2:~~ 5.5.2. Upon motion made promptly, and in any event at or before the time specified in the subpoena for compliance, an administrative law judge may (1) quash or modify a subpoena or subpoena duces tecum if it is unreasonable and oppressive, or requires disclosure of privileged information or (2) condition denial of the motion upon the advance payment by the person in whose behalf the subpoena duces tecum is issued of the reasonable cost of producing the books, papers, documents, or tangible things.

~~4.7:~~ 5.6. Motions - An application to an administrative law judge for an order must be by motion, in writing, unless made during a hearing, and must be filed and served upon all parties promptly, as soon as the facts or grounds upon which the motion is based becomes known to the moving party. All motions are to be accompanied by a concise statement of their basis, both legal and factual. All motions must be served by the moving party upon all other parties at the same time it is presented to the administrative law judge. Upon receiving a written motion, all non-moving parties shall be given a reasonable time within which to file a written response. A certificate of service must accompany all motions.

~~4.7.1:~~ 5.6.1. If any party desires a hearing on a motion, he shall make a request for a hearing at the time of the filing of his motion or response. An administrative law judge may, in his discretion, hold a hearing on a motion if it is determined that a hearing is necessary to the

development of a full and complete record on which a proper decision can be made. Such hearing may be conducted via telephone conference call, with all parties or their representatives participating.

~~4.7.2:~~ 5.6.2. If a situation necessitating a motion arises immediately before or during a hearing, an oral motion may be made at the hearing. The moving party is to 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.

~~4.8:~~ 5.7. Continuances - Any party may request a continuance of a hearing or other proceeding related to a grievance. Any party moving for a continuance must first attempt to contact the other parties to obtain an agreement to a continuance and to obtain five agreed upon dates for scheduling the hearing. Unless the requesting party demonstrates urgent circumstances, the request for a continuance will not be granted until the parties have agreed to a new hearing date. Requests for a continuance of a hearing will be granted upon a showing of good cause. Unless time does not permit, a request for a continuance is to be made in writing to the administrative law judge and served upon all parties of record. The administrative law judge may, upon his or her own motion, continue hearings or other proceedings.

~~4.9:~~ 5.8. Remand/~~transfer~~ - Any party may move to remand/~~transfer~~ (return to a lower level of the grievance procedure) a grievance. Requests for remand/~~transfer~~ of a grievance will be granted upon a showing of good cause. The administrative law judge may, upon his or her own motion, remand/~~transfer~~ a grievance for good cause.

~~4.10:~~ 5.9. Recusal - Any party may move to recuse (disqualify) the administrative law judge assigned to their grievance. Motions for recusal will be considered only in accordance with Rule ~~4.7~~ 5.6 and will be granted only for good cause shown, in the discretion of the administrative law judge. A motion for recusal will not operate to automatically continue a hearing or other action on the grievance; provided, that any party may make a separate motion for a continuance until such time as a decision is made on the motion for recusal.

~~4.10.1:~~ 5.9.1. The administrative law judge's decision on a motion to recuse may be appealed to the chief administrative law judge, and if the chief administrative law judge is the judge sought to be recused, then the appeal shall be to the Director of the Board. This decision may then be appealed to the Chairperson of the Board Board or its Chairman by any party to the grievance, in accordance with Rule ~~4.7~~ 5.6. The Chairperson will then call an emergency meeting of the Board to respond to the Motion. An appeal shall operate to automatically continue any hearing or other action on the grievance. The decision of the Board ~~or its Chairman~~ is final and not subject to further appeal or review prior to the disposition of the grievance.

~~4.11:~~ 5.10. Errata Notice - After the administrative law judge issues a final decision in a grievance, the Board retains jurisdiction to amend the decision to correct clerical errors by errata notice during the appeal period.

~~4.12:~~ 5.11. Failure to state a claim - A grievance may be dismissed, in the discretion of the administrative law judge, if no claim upon which relief can be granted is stated or a remedy wholly unavailable to the grievant is requested.

~~4.13:~~ 5.12. Discovery - ~~W. Va. Code §§ 18-29-6 and 29-6A-6 of the grievance procedure statutes encourage~~ The Board strongly encourages parties to participate in informal discovery prior to hearing. All employers must produce, prior to any hearing on the merits, any documents requested in writing by the grievant that are relevant and are not privileged. Further, if an employer intends to assert the application of any statute, policy, rule, regulation or written agreement or submits any written response to the filed grievance at any level, a copy is to be forwarded to the grievant and/or any representative of the grievant named in the grievance.

~~4.13.1:~~ 5.12.1. The administrative law judge shall have authority to order such additional discovery, by way of deposition, interrogatory, document production, or otherwise, as considered necessary for a fair determination of the issues in dispute, consistent with the expedited nature of the grievance procedure. When a party serves another party with a discovery request, that request need not be filed with the Board.

~~4.13.2:~~ 5.12.2. Parties shall attempt to resolve any discovery disputes among themselves before making a motion requesting an order compelling discovery. Any such motion must state that the parties have attempted to resolve the dispute, as well as the reason why the discovery is needed.

~~4.14:~~ 5.13. Joinder - Any party may move to join (or add as a party to the grievance) a person or entity necessary to grant complete relief in the grievance by filing a motion in accordance with Rule 4.7. The administrative law judge may on his or her own motion, join a person or entity necessary to grant complete relief in the grievance. The Division of Personnel must be joined and made a party in any state employee grievance involving classification and/or compensation matters.

~~4.15:~~ 5.14. Consolidation - Separate grievances filed by two or more employees may be consolidated for hearing and decision because the grievances contain identical or similar issues. Grievances may be consolidated by agreement of all parties, ~~or by the administrative law judge,~~ or the ~~grievance evaluator~~ chief administrator on his or /her own motion. Any party may move to join two or more grievances filed by the same party for purposes of hearing and/or decision, or the ~~grievance evaluator at Level Three~~ chief administrator or the administrative law judge may join such cases for united consideration on his or /her own motion.

~~4.16:~~ 5.15. Failure to pursue - Once no action by a party has been taken on a grievance for ~~four~~ two months, the Board will send all parties a letter, by certified mail, advising that the case will be dismissed from the docket of the Board twenty calendar days from the date of the letter, unless any party objects and can demonstrate, in writing, why the case should not be dismissed. If no timely written objection is received by the Board, an order of dismissal will be entered. If timely written objection is received by the Board, the grievance will be promptly scheduled for hearing or other

action will be taken consistent with the orderly disposition of the grievance. If neither the grievant nor the grievant's representative, if applicable, appears for a scheduled grievance hearing, the administrative law judge may issue a show cause order, requiring the grievant to show good cause for his or her absence, and advising that the failure to respond with a set time limit will result in the dismissal of the grievance for failure to prosecute.

~~4.17:~~ 5.16. Hearings in general - Administrative law judges have full and complete authority to preside over and control all aspects of a hearing. If, in the determination of the administrative law judge, an individual present at a hearing is engaging in disruptive conduct, the administrative law judge may, in his 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. If, at the close of hearing, the parties wish to submit proposed Findings of Fact and Conclusions of Law, the request shall be granted, but unless there are exigent circumstance, the time frame for submission should be no greater than thirty days.

~~4.18:~~ 5.17. Location - All ~~Level Four~~ level two and three proceedings will be conducted in the Board's offices; provided that, upon written motion in accordance with Rule ~~4.7~~ 5.6 and for good cause shown, the administrative law judge may, in his/~~or~~ her discretion, conduct the hearing in another location agreeable to the parties. In such cases, the party 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 necessary; and a certified copy of the transcript of the hearing and delivery of the same to the administrative law judge within a specific number of days after the hearing. However, the administrative law judge has the discretion to use the Board's recording equipment to record the testimony, at no cost to the parties.

~~4.19:~~ 5.18. Final disposition - Grievances may be disposed of in three ways: by decision on the merits; nonappealable dismissal order; or appealable dismissal order.

~~4.19.1:~~ 5.18.1. Decisions on the merits will result in the granting or denying of a grievance, in whole or in part. All decisions are maintained by the Board and are transmitted electronically, monthly to the Office of the Secretary of State, Capitol Complex, Charleston, West Virginia 25305. Decisions on the merits are appealable to the Kanawha County Circuit Court ~~or the circuit court of the county in which the grievance arose.~~

~~4.19.2:~~ 5.18.2. Nonappealable dismissal orders may be based upon grievances dismissed for the following: settlement, withdrawal and, in accordance with Rule ~~4.15~~ 5.15, a party's failure to pursue.

~~4.19.2:~~ 5.18.3. Appealable dismissal orders may be issued in grievances dismissed for all other reasons, including, but not limited to, failure to state a claim or a party's failure to abide by an appropriate order of an administrative law judge. Appeals of any cases dismissed pursuant to this provision are to be made in the same manner as appeals of decisions on the merits.

~~4.20:~~ 5.19. Appeals to circuit court - In every matter appealed to circuit court, the appealing party shall serve a copy of the appeal petition upon the Board as required by W. Va. Code § 29A-5-4(b), and will provide the Board with the civil action number so that the certified record can be properly filed with the circuit court. The party prevailing on the appeal shall furnish the Board with a copy of the final decision of the circuit court and any accompanying order within twenty days of its receipt.

~~4.21:~~ 5.20. Burden of proof - The grievant bears the burden of proving his case by a preponderance of the evidence, except in disciplinary matters, where the burden is on the employer to prove that the action taken was justified. Any party asserting the application of an affirmative defense bears the burden of proving that defense by a preponderance of the evidence.

~~4.22:~~ 5.21. Advisory opinions - The Board will, under no circumstances, issue an advisory opinion, i.e., an opinion on an issue not directly raised before the Board in a grievance.

~~4.23:~~ 5.22. Registration of employee organizations - All labor unions or other organizations representing West Virginia education and/or state employees before the Board should register at the Board's main office in Charleston in accordance with ~~W. Va. Code § 18-29-2(q) and W. Va. Code § 29-6A-2(f).~~ (See Appendix H for Employee Organization Registration Form.)

~~4.24:~~ 5.23. Interpreter Appointment - In accordance with the requirements of W. Va. Code § 5-14A-5, if a hearing impaired person makes a request for an interpreter, the Board, at its own expense, shall appoint an interpreter to interpret the proceeding to the hearing impaired person and/or to interpret his or her testimony.

#### **§156-1-6. Claims for Relief by Default**

6.1. A grievant seeking to prevail by default must file, with the chief administrator, a written claim notice of intent to proceed to the next level or to enforce the default within ten days of the default. ~~seeking relief by default with his or her employer and may, at the same time, file the claim with the Board. If the chief administrator objects to the default, After the employer receives the written claim for default, it he/she may file a request for a hearing with the Board within five working days. Upon receipt of a claim for relief by default of the chief administrator's objection, the Board will place the claim for default on its docket, assign a docket number, and set the claim matter for hearing. The issues to be decided may include whether a default has occurred at Levels One, Two or Three, whether the employer has a statutory excuse for not responding within the time required by law and/or whether the relief sought is contrary to law or clearly wrong or contrary to proper and available remedies. The default proceeding is usually bifurcated into two hearings. Once a grievant files a written claim for relief by default with the Board at Level Four, or the chief administrator files an objection, all proceedings at the lower levels are automatically stayed until all default matters have been ruled upon at Level Four, unless all parties agree in writing that lower level proceedings can go forward. Mediation services shall continue to be available while default matters are pending.~~

§156-1-7. Representation - Employees are entitled to representation at any step of the procedure, including meetings held with employees to discuss disciplinary action.

APPENDIX A

**CERTIFICATE OF SERVICE AND MAILING**

**THE UNDERSIGNED** certifies the attached [*NAME OF DOCUMENT*] has been sent to the following persons and addresses by United States Mail, postage prepaid, by Facsimile, by State Interdepartmental Mail, or by Personal Hand Delivery:

Certified sent this the \_\_\_\_ day of \_\_\_\_\_, 200\_.

\_\_\_\_\_

Title:

Appendix B  
Level One Hearing Guidelines<sup>1</sup>

At a level one hearing, the chief administrator, or his designee, should:

- Utilize a sign-in sheet for all parties and witnesses
- Turn on the recording device prior to any discussion about the grievance
- Introduce himself or herself and explain what will happen during the hearing
- Clarify any necessary issues before starting the actual hearing process
- Allow only one person to talk at a time
- Identify who has the burden of proof
- Allow the parties to make a brief opening statement if desired
- Start the hearing with the party that has the burden of proof
- Swear (or affirm) each witnesses in separately and ask his/her name and position on the record
- Allow each party to question and cross-examine each witness, but only one person for each party may cross-examine the witness (no tag-teaming)
- Complete the testimony of each witnesses as they are called
- Limit the number of witnesses to prevent repetitious testimony
- Mark each document you admit clearly and separately, noting which party submitted the document
- Ensure the hearing does not become an open discussion, but allow all parties to ask the witness questions as appropriate
- Allow the parties to give a closing statement at the end of the hearing, if desired.
- Complete the "Cost Report" at the close of the hearing and submit it with your written decision to the West Virginia Public Employees Grievance Board.

The parties may submit proposed Findings of Fact and Conclusions of Law, if they agree to waive the timelines for the issuance of the Decision. If the parties elect this option, have this agreement stated on the record, and set a date certain for the submission of these proposals and a new post-mark date for the issuance of the level one Decision.

---

<sup>1</sup>The Board realizes many of the individuals conducting hearings have extensive experience. These Guidelines are to assist with that process.

APPENDIX C

WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD

808 Greenbrier Street, Charleston, WV 25311 (304) 558-3361 Fax (304) 558-1106 Toll-Free (866) 747-6743
web site: pegboard.state.wv.us

GRIEVANCE FORM FOR LEVELS 1, 2, AND 3

Grievant's Information: (all information is required) Grievant's Title and/or Classification: \_\_\_\_\_

Grievant's Full Name Agency, Institution, Board, Division Grievant's Representative (if applicable)

Grievant's Home Address Grievant's Work Address Representative's Address

City, State and Zip Code City, State and Zip Code City, State and Zip Code

Grievant's Home Telephone No. Grievant's Work Telephone No. Representative's Telephone No.

Grievant's Home E-mail Address Grievant's Work E-Mail Address Representative's E-Mail Address

STATEMENT OF GRIEVANCE: (Please state the event causing this grievance and list the specific statutes, policies, rules, regulations or agreements you claim have been violated, misapplied or misinterpreted. Additional sheets may be attached.)

RELIEF SOUGHT:

Level One (choose one): Hearing \_\_\_ Conference \_\_\_ Waiver to Level 3 (must read instructions first) Chief Administrator's Initials for Waiver
Date Filed: \_\_\_ Decision Date: \_\_\_ Decision Outcome: \_\_\_

Level Two (choose one, default option is Mediation by Grievance Board): Date Filed: \_\_\_
Mediation by Grievance Board (free) \_\_\_
Before one of the following options can be chosen, it must be agreed to by all parties by signing a Mediation Agreement Form, which must be completed and attached to a copy of this document.
Mediation/Arbitration (free) \_\_\_ Private Mediation (Cost to be paid by parties) \_\_\_

Level Three (choose Hearing \_\_\_ Submit on Level 1 Hearing Record \_\_\_ Date Filed: \_\_\_

FOR GRIEVANCE BOARD USE ONLY
Docket Number: \_\_\_
Topic: \_\_\_
Level 2 ALJ: \_\_\_
Level 3 ALJ: \_\_\_

Grievant's Signature

This form is to be used at all levels of the grievance procedure.

"Days," for purposes of filing or responding to grievances, means working days.

**Level one - W. Va. Code § 6C-2-4 (a)(1)**

- o File grievance form with the chief administrator within fifteen (15) days of the grievable event. Indicate whether a conference or a hearing is desired. The grievant must also submit a copy of the grievance form to the West Virginia Public Employees Grievance Board, 808 Greenbrier Street, Charleston, West Virginia 25311. If it is a state employee grievance, a third copy shall be sent to the Division of Personnel.
- o Chief administrator must hold the conference or hearing within ten (10) days of receipt of written grievance and issue written decision within fifteen (15) days of the chosen proceeding.

**Level two - W. Va. Code § 6C-2-4 (b)(1)**

- o Grievant may appeal the chief administrator decision within ten (10) days of receiving the Level one decision. Indicate which method of alternative dispute resolution is desired.
- o The alternative dispute resolution proceeding is to be scheduled within twenty (20) days and the outcome of this proceedings is to be documented, in writing, in fifteen (15) days.

**Level three - W. Va. Code § 6C-2-4 (c)(1)**

- o Grievant may appeal to the Grievance Board within ten (10) days of the level two decision to request a level three hearing. A copy of this appeal must be sent to the employer.
- o A State grievant must also send a copy of the appeal to the Director of the Division of Personnel, Building 6, Room 416, State Capitol Complex, Charleston, West Virginia 25305.
- o The grievant must select whether to request a level three hearing or to submit the case on the level one hearing record.
- o A Level three hearing, if requested, is to be held within a reasonable time following the request. **Note: In practice, hearings are usually held on a date agreed upon by the parties.**
- o The Administrative Law Judge must issue a written decision within thirty (30) days of the hearing. **Note: If the parties agree to file proposed findings of fact and conclusions of law, the Board considers the 30-day deadline to be automatically extended until the agreed date.**

**NOTE: WAIVER TO LEVEL THREE**

Pursuant to W. Va. Code § 6C-2-4(3), a grievant may proceed to level three for 2 reasons: 1) with a written agreement between the grievant and the chief administrator, or 2) when the grievant has been discharged, suspended without pay, or demoted or reclassified resulting in a loss of compensation or benefits.

APPENDIX D

**WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD**

808 Greenbrier Street, Charleston, WV 25311 (304) 558-3361 Fax (304) 558-1106 Toll-Free (866) 747-6743  
web site: pegboard.state.wv.us

**COST ANALYSIS FORM**

Pursuant to *W. Va. Code* § 6C-3-3(c) (3) & (4) each employer is required to report the estimated and actual costs associated with each grievance. The following form is to assist the employer in identify these costs.

Cost of chief administrator's time:  
(include hearing and conference time, as well as the time required to write the Decision.)

\_\_\_\_\_

Cost of Grievant's time:

\_\_\_\_\_

Cost of Grievant's representative's time, if a public employee:

\_\_\_\_\_

Cost of witnesses' time, if applicable:

\_\_\_\_\_

Cost of preparation time:

\_\_\_\_\_

Cost of additional staff time:  
(Such as secretarial assistance, transcript completion, filing and processing of forms and responses)

\_\_\_\_\_

APPENDIX E

**WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD**

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web site: pegboard.state.wv.us

**INTERVENTION FORM**

**Case Information:** (all information is required)

\_\_\_\_\_  
Intervenor,  
v. \_\_\_\_\_ Docket No. \_\_\_\_\_  
\_\_\_\_\_  
Respondent.

Pursuant to *W. Va. Code* § 6C-2-3(e), I request to be made a party in this grievance which may substantially and adversely affect my rights or property. My interest is not adequately represented by the existing parties.

<b>Intervenor's Information:</b> (all information is required)	Intervenor's Title and/or Classification:	_____
Intervenor's Full Name	Agency, Institution, Board, Division	Intervenor's Representative (if applicable)
_____	_____	_____
Intervenor's Home Address	Intervenor's Work Address	Representative's Address
_____	_____	_____
City, State and Zip Code	City, State and Zip Code	City, State and Zip Code
_____	_____	_____
Intervenor's Home Telephone No.	Intervenor's Work Telephone No.	Representative's Telephone No.
_____	_____	_____
Intervenor's Home E-mail Address	Intervenor's Work E-Mail Address	Representative's E-Mail Address
_____	_____	_____

\_\_\_\_\_  
Intervenor's Signature

APPENDIX F

WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD  
808 Greenbrier Street, Charleston, WV 25311 (304) 558-3361 Fax (304) 558-1106 Toll-Free (866) 747-6743  
web site: pegboard.state.wv.us

MEDIATION AGREEMENT FORM

Do not use this form if you intend to use Mediation by Grievance Board.  
This form must be submitted before Mediation-Arbitration or Private Mediation will be permitted.

Case Information: (all information is required)

\_\_\_\_\_  
Grievant,  
v. \_\_\_\_\_ Docket No. \_\_\_\_\_  
\_\_\_\_\_  
Respondent.

**Choice 1 - Mediation-Arbitration:** (this service is free): The Parties request this grievance be submitted to Mediation-Arbitration pursuant to the provisions of *W. Va. Code § 6C-2-4(b)(1)(C)*. An administrative law judge of the Grievance Board will be appointed to serve as a mediator/arbitrator.

\_\_\_\_\_  
Grievant's Signature Employer's Signature

**Choice 2 - Private Mediation:** (Cost to be paid by parties): The Parties agree this grievance be submitted to mediation by a private mediator pursuant to the provisions of *W. Va. Code § 6C-2-4(b)(1)(B)*.

Private Mediator's Full Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
City, State and Zip Code: \_\_\_\_\_  
Telephone No(s): \_\_\_\_\_  
E-mail Address: \_\_\_\_\_

Costs of private mediator shall be borne by the parties as noted below:

Employee Pays: \$ \_\_\_\_\_ Employer Pays: \$ \_\_\_\_\_

\_\_\_\_\_  
Grievant's Signature Employer's Signature  
\_\_\_\_\_  
Private Mediator's Signature

APPENDIX G

**WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD**

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web site: pegboard.state.wv.us

**MEDIATION WAIVER FORM**

The parties, after discussion, agree mediation would not be appropriate and/or helpful and request to waive mediation and come to level three. The parties realize the final decision on this issue rests with the administrative law judge assigned to the case.

---

Grievant's Signature

Employer's Signature

Approve \_\_\_\_\_

Deny \_\_\_\_\_

---

Administrative Law Judge



This rule must be amended because the Legislature, in the 2007 General Session, passed legislation changing the grievance procedure. This proposed amendment will update the Rule to provide a process for implementation of the new language.

APPENDIX B

***FISCAL NOTE FOR PROPOSED RULES***

Rule Title: West Virginia Education and State Employees Grievance Board

Type of Rule:  Legislative  Interpretive  Procedural

Agency: West Virginia Public Employees Grievance Board

Address: 808 Greenbrier Street  
Charleston, WV 25311

---

Phone Number: 304-558-3361 Email: wvqb@wv.gov

**Fiscal Note Summary**

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

This is an amendment to a procedural rule, so there will be no fiscal impact on state government.

**Fiscal Note Detail**

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

<b>FISCAL YEAR</b>			
Effect of Proposal	Current Increase/Decrease (use "-")	Next Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
<b>1. Estimated Total Cost</b>	0.00		
Personal Services	0.00		
Current Expenses	0.00		
Repairs & Alterations	0.00		
Assets	0.00		
Other	0.00		
<b>2. Estimated Total Revenues</b>	0.00		

Rule Title: \_\_\_\_\_

Rule Title: West Virginia Education and State Employees Grievance Board

3. **Explanation of above estimates (including long-range effect):**  
Please include any increase or decrease in fees in your estimated total revenues.

There will be no increase or decrease in fees.

**MEMORANDUM**

Please identify any areas of vagueness, technical defects, reasons the proposed rule **would not** have a fiscal impact, and/or any special issues **not** captured elsewhere on this form.

None

Date: August 28, 2007

Signature of Agency Head or Authorized Representative

\_\_\_\_\_