

**Cox, James A**

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**From:** Cox, James A  
**Sent:** Tuesday, July 17, 2018 7:25 AM  
**To:** Webb, Sheryl R  
**Subject:** Response to DOP Comments  
**Attachments:** Response to DOP.PDF

Director Webb,

Please find attached the Board's response to comments submitted by DOP in regards to our proposed Rule amendments.

Regards,



Jim Cox, Director  
WV Public Employees Grievance Board  
1956 Kanawha Blvd. East  
Charleston, WV 25311  
Office: 304.558.3361

John A. Myers  
Cabinet Secretary  
Department of Administration

James A. Cox  
Director



Public Employees Grievance Board

Grievance Board  
John A. Myers, Chairman  
Dale Lee, Secretary/Treasurer  
William Burdette  
Kris Mallory  
Holly S. Plantinsic

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July 17, 2018

VIA EMAIL

Sheryl R. Webb, Director  
WV Division of Personnel  
Building 3, Suite 500  
1900 Kanawha Blvd., East  
Charleston, WV 25305

Dear Ms. Webb:

I'm writing in response to the comments received from you during the comment period for the proposed amendments to the Rules of Practice and Procedure of the West Virginia Public Employees Grievance Board. We are grateful for your participation and input in this process.

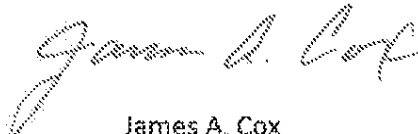
Below is my response to your specific comments.

- Item 1 Will be adopted and included in the agency approved final file.
- Item 2 Will be adopted and included in the agency approved final file.
- Item 3 Relating to subsection 2.1.5 – We believe the specific title of the Rule and the definition of “hearing” requires no further clarification. No change will be made regarding this comment.
- Item 4 Relating to subsection 4.1 – You have requested multiple revisions which have been given consideration. Unfortunately, these are outside the scope of the current proposed amendments and will not be incorporated at this time. However, it is the intent of the Board to begin a comprehensive review of the Rule and propose more substantial changes that are in-line with these comments at a later time.
- Item 5 Relating to subsection 4.5 – Implementing this change would place a new requirement on all agencies that utilize the services of the Board. Therefore, at this time, this change will not be incorporated. This however, is something that could be addressed during the comprehensive review of the Rule.
- Item 6 Relating to subsection 5.1.2 – After careful consideration, it has been determined this change is beyond the scope of the current proposed revisions. No change will be made at this time.

- Item 7 Relating to subsection 5.2.2 – After careful consideration, it has been determined this change is beyond the scope of the current proposed revisions. No change will be made at this time.
- Item 8 Relating to subsection 6.2 – The administrative law judges are without authority to grant summary judgment. West Virginia Code § 6C-2-6 requires expenses be borne by the party incurring the expense absent the limited authority of the administrative law judge under West Virginia Code § 6C-2-4(c)(6) to assess costs against a party acting in extreme bad faith. The current Rule states the conditions under which a grievance may be dismissed. After careful consideration, no change will be made at this time.
- Item 9 Relating to subsection 6.3 – This issue is outside the current scope of the proposed revisions, although, it is something that could be addressed in the more substantial review of the Rule.
- Item 10 Relating to subsection 6.18 – There is no specific language in the Code or Rule that prevent the use of the employee's worksite; provided, that it is with the agreement of all the parties. In situations where the parties disagree, the matter will be decided by the administrative law judge. No change to this subsection will be made at this time.
- Item 11 Relating to subsection 6.21 – This subsection refers both to advisory opinions requested from the Board and to moot issues raised in a grievance, the decision of which would result in an advisory opinion. In matters where a grievance becomes moot, the grievance may be dismissed under the current Rules relating to dismissal. No changes will be made to this subsection at this time.

Thank you for taking the time to submit comments to the Board's proposed amendments. I want to assure you that each comment has received careful consideration for the proposed amendments. As noted above, the Board will be conducting a more thorough review of the Rule which may include looking more closely at the areas you have identified.

Best regards,

A handwritten signature in black ink, appearing to read "James A. Cox", written in a cursive style.

James A. Cox  
Director

## Cox, James A

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**From:** Gibson, Drema T  
**Sent:** Wednesday, July 11, 2018 2:01 PM  
**To:** Cox, James A  
**Cc:** Webb, Sheryl R; Thomas, Joe F  
**Subject:** DOP's Proposed Revisions to PEGB Procedural Rule  
**Attachments:** 2018-07-11 Ltr J. Cox re proposed procedural rule revisions.pdf

Mr. Cox:

Please find attached a letter from Director Webb.

Thank you,

Drema T. Gibson  
*Administrative Secretary*  
*Director's Office*



West Virginia  
Division of Personnel

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West Virginia Division of Personnel

An agency under the Department of Justice

Sheryl R. Webb, Director

John A. Myers, Cabinet Secretary

July 11, 2018

James A. Cox, Director  
WV Public Employees Grievance Board  
1596 Kanawha Blvd., East  
Charleston, WV 25311

Via email to james.a.cox@wv.gov

Dear Director Cox:

The West Virginia Division of Personnel (DOP) has reviewed the West Virginia Public Employees Grievance Board's proposed amendments to its Procedural Rule, Title 156, Series 1 – *Rules of Practice and Procedure of the West Virginia Public Employees Grievance Board*. Please find below a summary of DOP's proposed revisions for your consideration.

1. Recommend consistency with use of "Board" or "Grievance Board" throughout.
2. Recommend consistency with use of "website" or "web site" throughout.
3. Subsection 2.1.5 – Recommend adding language to clarify that a hearing does not include a meeting held with an employee for the purpose of discussing or considering disciplinary action.
4. Subsection 4.1 – Recommend adding language establishing the following requirements:
  - a. Grievant is required to review and sign their own grievance form (even if prepared by a representative) unless represented by legal counsel.
  - b. Grievant is required to clearly state the grievance and relief sought in compliance with the requirements of the statute, including specifically identifying the law, rule or policy which has been violated.
  - c. If all the information on the grievance form is not completed when filed, the grievance should be summarily dismissed, or the form should be returned and the employee required to complete the form.

Building 3, Suite 500, 1000 Kanawha Boulevard, East, Charleston, West Virginia 25305-0139

TEL: 304 536 2950 VISIT OUR WEBSITE AT [www.dopersonnel.wv.gov](http://www.dopersonnel.wv.gov) FAX: 304 957-0141

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Also recommend that the form be revised to include the actual position classification, any working title, and supervisor's name.

5. Subsection 4.5 – Recommend language be added requiring employers to provide notice of right to intervene.
6. Subsection 5.1.2 – Recommend language be added clarifying that DOP must be joined and made a party at this level in grievances involving classification or compensation matters; consistent with subsection 6.13.
7. Subsection 5.2.2 – Recommend language be added to clarify that any proposed agreement between an agency and a current or former classified employee regarding the terms and/or conditions of the individual's employment must be certified by the Director of the Division of Personnel as being in compliance with W. VA. CODE § 29-6-1 *et seq.*, or with an order of a court of competent jurisdiction before it can be effective.
8. Subsection 6.2 – Recommend language be added to clarify that an administrative law judge may summarily dismiss, grant summary judgement, and/or assess costs for frivolousness, failure to pursue, failure to appear, failure to respond, etc.
9. Subsection 6.3 – Recommend recording of prehearing conferences be mandatory.
10. Subsection 6.18 – Recommend language be added to clarify that the location may be the employee's work site. It is also recommended that use of the Board's recording equipment be mandatory.
11. Subsection 6.21 – Recommend language be added to clarify that the grievance will be dismissed.

Should you have any further questions, please feel free to contact me at 681-313-2627.

Sincerely,

Sheryl R. Webb  
Director

SRW/jt

c: Joe Thomas, Deputy Director