



Book	Policy Manual
Section	3000 Professional Staff
Title	GRIEVANCE PROCEDURE
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3340 - **GRIEVANCE PROCEDURE**

The purpose of this policy is to provide a procedure for employees of Mingo County Schools and their employer or agents of the employer to reach solutions to problems which arise between them within the scope of their respective employment relationships to the end that good morale may be maintained, effective job performance may be enhanced and the citizens of the community may be better served.

This policy is intended to provide a simple, expeditious and fair process for resolving problems at the lowest possible administrative level and shall be construed to effectuate this purpose. A grievance may be resolved informally by stipulation or settlement agreed to in writing by the parties. Nothing in this policy shall prohibit the exercise of any hearing right provided in WV Chapters 18 and 18A. Parties to grievances shall at all times act in good faith and make every possible effort to resolve disputes at the lowest level of the grievance procedure.

Definitions

For the purpose of this policy:

- A. **"Board"** means the West Virginia Public Employees Grievance Board.
- B. **"Chief Administrator"** means, in the appropriate context, the State Superintendent, the County Superintendent, the executive director of a regional educational service agency or the director of a multi-county vocational center who is vested with the authority to resolve a grievance. A "chief administrator" includes a designee, with the authority delegated by the chief administrator, appointed to handle any aspect of this grievance procedure.
- C. **"Days"** means working days exclusive of Saturday, Sunday, official holidays and any day in which the employee's workplace is legally closed under the authority of the chief administrator due to weather or other cause provided for by statute, rule, policy or practice.
- D. **"Discrimination"** means any differences in the treatment of similarly situated employees, unless the differences are related to the actual job responsibilities of the employees or are agreed to in writing by the employees.
- E. **"Employee"** means any person hired for permanent employment by an employer for a probationary, full- or part-time position.

A substitute education employee is considered an "employee" only on matters related to days worked or when there is a violation, misapplication or misinterpretation of a statute, policy, rule or written agreement relating to the substitute.

- F. **"Employee Organization"** means an employee advocacy organization with employee members that has filed with the Board the name, address, chief officer and membership criteria of the organization.

- C. If the administrative law judge finds that the employer has a defense to the default as permitted above, or that the remedy is contrary to law or not proper or available at law, the administrative law judge may deny the default, or modify the remedy to be granted to comply with the law or otherwise make the grievant whole.

Defenses and Limitations:

- A. Untimeliness - Any assertion that the filing of the grievance at level one was untimely shall be made at or before level two.
- B. Back Pay – When it is a proper remedy, back pay may only be granted for one (1) year prior to the filing of a grievance, unless the grievant shows, by a preponderance of the evidence that the employer acted in bad faith in concealing the facts given rise to the claim for back pay, in which case an eighteen (18) month limitation on back pay applies
- C. Statutory Defense - If a party intends to assert the application of any statute, policy, rule or written agreement as a defense at any level, then a copy of the materials shall be forwarded to all parties.
- D. Withdrawal and Reinstatement of Grievance - An employee may withdraw a grievance at any time by filing a written notice of withdrawal with the chief administrator or administrative law judge. The grievance may not be reinstated by the grievant unless reinstatement is granted by the chief administrator or the administrative law judge. If more than one (1) employee is named as a grievant, the withdrawal of one (1) employee does not prejudice the rights of any other employee named in the grievance.
- E. Consolidation and Groups of Similarly Situated Employees:
1. Grievances may be consolidated at any level by agreement of all parties, or at the discretion of the chief administrator or administrative law judge.
 2. Class actions are not permitted. However, a grievance may be filed by one (1) or more employees on behalf of a group of similarly situated employees. Any similarly situated employee shall complete a grievance form stating his/her intent to join the group of similarly situated employees. Only one (1) employee filing a grievance on behalf of similarly situated employees shall be required to participate in the conference or level one hearing.
- F. Intervention - Upon a timely request, any employee may intervene and become a party to a grievance at any level when the employee demonstrates that the disposition of the action may substantially and adversely affect his/her rights or property and that his/her interest is not adequately represented by the existing parties.
- G. Representation and disciplinary action- An employee may designate a representative who may be present at any step of the procedure as well as at any meeting that is held with the employee for the purpose of discussing or considering disciplinary action. Any employee may not be compelled to testify against himself/herself in a disciplinary grievance hearing.
- H. Reprisal - No reprisal or retaliation of any kind may be taken by an employer against a grievant or any other participant in a grievance proceeding by reason of his/her participation. Reprisal or retaliation constitutes a grievance, and any person held responsible is subject to disciplinary action for insubordination.
- I. Improper classification – A supervisor or administrator responsible for a willful act of bad faith toward an employee or who intentionally works an employee out of classification may be subject to disciplinary action, including demotion or discharge.
- J. Forms – Forms for filing grievances, giving notice, taking appeals, making reports and recommendations, and all other necessary documents created by the Board, shall be available to any employee upon request of the chief administrator.
- K. Discovery – The parties are entitled to copies of all material submitted to the chief administrator or the administrative law judge by any party.
- L. Notice – Reasonable notice of a proceeding shall be sent at least five (5) days prior to the proceeding to all parties and their representatives and shall include the date, time and place of the proceeding. If an employer causes a proceeding to be postponed without adequate notice to employees who are scheduled to appear during their normal work day, the employees may not suffer any loss in pay for work time lost.
- M. Record – Conferences are not required to be recorded, but all documents admitted and the decision, agreement or report become part of the record. All the testimony at a level one and level three hearing shall be recorded by mechanical means, and a copy of the recording provided to any party upon request. The Board is responsible for paying for and promptly providing a certified transcript of a level three hearing to the court for a mandamus or appellate proceeding.
- N. Grievance Decisions and reports:

4. An employee may proceed directly to level three upon the agreement of the parties or when the grievant has been discharged, suspended without pay or demoted or reclassified resulting in a loss of compensation or benefits. Level one and level two proceedings are waived in these matters.

B. Level Two: Alternative Dispute Resolution

Within ten (10) days of receiving an adverse written decision at level one, the grievant shall file a written request for mediation, private mediation or mediation or private-arbitration.

1. Mediation - The Board shall schedule the mediation between the parties within twenty (20) days of the request. Mediation shall be conducted by an administrative law judge pursuant to standard mediation practices and Board procedures at no cost to the parties. Parties may be represented and shall have the authority to resolve the dispute. The report of the mediation shall be documented in writing within fifteen (15) days. Agreements are binding and enforceable in this state by a writ of mandamus.
2. Private Mediation – The parties may agree in writing to retain their choice of a private mediator and share the cost. The mediator shall schedule the mediation within twenty (20) days of the written request and shall follow standard mediation practices and any applicable Board procedures. Parties may be represented and shall have the authority to resolve the dispute. The report of the mediation shall be documented in writing within fifteen (15) days. Agreements are binding and enforceable in this State by a writ of mandamus.
3. Private-Arbitration – The parties may agree in writing, to retain their choice of a private arbitrator and share the cost. The arbitrator shall schedule for arbitration within twenty (20) days of the written request and shall follow standard arbitration practices and any applicable Board procedures. The Arbitrator shall render a decision in writing to all parties, setting forth findings of fact and conclusions of law on the issues submitted within thirty (30) days following the arbitration. An arbitration decision is binding and enforceable in this State by a writ of mandamus. The arbitrator shall inform the Board, in writing, of the decision within ten (10) days.

C. Level Three Hearing:

1. Within ten (10) days of receiving a written report stating that level two was unsuccessful, the grievant may file a written appeal with the employer and the Board requesting a level three hearing on the grievance.
2. The administrative law judge shall conduct all proceedings in an impartial manner and shall ensure that all parties are accorded procedural and substantive due process.
3. The administrative law judge shall schedule the level three hearing, and any other proceedings or deadlines, within a reasonable time in consultation with the parties. The location of the hearing and whether the hearing is to be made public are at the discretion of the administrative law judge.
4. The administrative law judge may issue subpoenas for witnesses, limit witnesses, administer oaths and exercise other powers granted by rule or law.
5. Within thirty (30) days following the hearing or the receipt of the proposed findings of fact and conclusions of law, the administrative law judge shall render a decision in writing to all parties setting forth findings of fact and conclusions of law on the issues submitted.
6. The administrative law judge may make a determination of bad faith and in extreme instances allocate the cost of the hearing to the party found to be acting in bad faith. The allocation of costs shall be based on the relative ability of the party to pay the costs.

Enforcement and Appeal

A. The decision of the administrative law judge is final upon the parties and is enforceable in the circuit court of Kanawha County.

B. A party may appeal the decision of the administrative law judge on the grounds that the decision:

1. is contrary to law or a lawfully adopted rule or written policy of the employer
2. exceeds the administrative law judge's statutory authority;
3. is the result of fraud or deceit;

- B. it is necessary to prevent the employee from committing a crime, fraud, or any act that is reasonably certain to result in substantial injury to the financial interests or property of another or to rectify or mitigate any such action after it has occurred;
- C. the communication or information constitutes an admission that the employee has committed a crime; or
- D. it is necessary to comply with a court order or other law.

An employee organization or its agent may disclose an otherwise confidential, as established in WV Code 6C-2-8, communication or information in order to:

- A. secure legal advice about the compliance of the employee organization or its agent with a court order or other law;
- B. establish a claim or defense on behalf of the employee organization or its agent in a controversy between the employee and the employee organization or its agent;
- C. establish a defense to a criminal charge or civil claim against the employee organization or its agent based on conduct in which the employee was involved;
- D. respond to allegations in any proceeding concerning the performance of professional duties by the employee organization or its agent on behalf of the employee; or
- E. an employee organization or its agent may disclose an otherwise confidential communication or information, as established in WV Code 6C- 28-8, without regard to whether the disclosure is made within the public employees' grievance procedure, in the following circumstances:
 - 1. The employee organization has obtained the express written or oral consent of the employee.
 - 2. The employee has, by other act or conduct, waived the confidentiality of the communication or information.
 - 3. The employee is deceased or has been adjudicated incompetent by a court of competent jurisdiction and the employee organization has obtained the written or oral consent of the personal representative of the employee's estate or of the employee's guardian.

If there is a conflict between the application of WV Code 6C-2 and any Federal or State labor law, the provisions of the Federal or other State law shall control.

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WV 6C-2-1 through 8, 6C-3-1 et seq.