

# WV Higher Education Grievance FAQ

## **What is a grievance?**

In short, a grievance is a claim by an employee alleging a violation, a misapplication or a misinterpretation of the statutes, policies, rules or written agreements applicable to an employee. See W. Va. Code §6C-2-2(i)(1)

## **What are some things that can't be the subject of a grievance?**

Matters related to employee pensions, retirement, public employee insurance or any other matter in which the employer does not have the authority to act. See W. Va. Code §6C-2-2(i)(2)

## **Who can file a grievance?**

Any person who is hired by a covered employer for permanent employment for a probationary, full- or part-time position, civilian employees of the State Police, an employee of a constitutional officer covered under the civil service system. 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.

Covered employers are: most state agencies, departments, boards, commissions, colleges, universities, institutions, the State Board of Education, the Department of Education, county boards of education, regional educational service agencies or multicounty vocational centers.

## **How long after an event or incident do I have to file a grievance?**

An employee has fifteen days following the occurrence of the event OR within fifteen days of the date which the event became known to the employee OR within fifteen days of the most recent occurrence of a continuing practice giving rise to the grievance. See W. Va. Code §6C-2-4(a)(1)

“Days” means working days excluding Saturday, Sunday, official holidays and any other day which the employee’s workplace is legally closed under the authority of the chief administrator due to weather or other cause. See W. Va. Code §6C-2-2(c)

## **How many levels are there in the grievance process?**

There are three levels available to an employee as part of the Public Employees Grievance Board process. Decisions issued by the Grievance Board are appealable to the Circuit Court of Kanawha County.

## **What is the difference between a Level One Hearing and a Level One Conference?**

Employees filing a level one grievance have the option to select either a level one hearing, or a level one conference.

A level one hearing shall be held within fifteen business days of the chief administrator or designee receiving the grievance form. A level one hearing is recorded. The parties may present witnesses and offer documents to be admitted into evidence.

A level one conference shall be held within ten business days of the chief administrator or designee receiving the grievance form. A level one conference is a private, informal meeting to discuss the issues raised in the grievance, exchange information, and attempt to resolve the grievance.

Both hearings and conferences are held by the chief administrator of the employee's agency or the chief administrator's designee. Unlike a level one hearing, a conference is not recorded.

## **What happens at Level Two?**

The purpose of level two is to allow the parties the opportunity to resolve the grievance without proceeding to an evidentiary hearing before a Grievance Board ALJ. In mediation, the mediator assists the parties in discussing the grievance in an attempt to settle the grievance through the agreement of the parties. Private arbitration is a less formal hearing process, in which the final decision is made by an arbitrator that the parties select and pay for themselves.

The grievant may choose one of three options at level two.

- Mediation conducted by an Administrative Law Judge (ALJ) employed by the Public Employees Grievance Board. Both the grievant and respondent may be represented, both of which shall have the authority to resolve the alleged dispute. Agreements made by the parties at level two shall be binding and enforceable.
- Mediation conducted by a private mediator, not employed by the Public Employees Grievance Board. The parties involved must agree in writing to private mediation which includes sharing any costs associated with private mediation. Agreements made using private mediation shall be binding and enforceable.
- Arbitration conducted by a private arbitrator who is not an employed by the Public Employees Grievance Board. The parties involved must agree in writing to private arbitration which includes sharing any costs associated with private arbitration. Agreements made using private arbitration shall be binding and enforceable.

Link to Level Two Mediation Form: [Level Two Mediation Form](#)

## **Can I file directly to Level Three?**

An employee may proceed directly to level three if all parties agree to waive levels one and two, or when the grievant has been terminated, 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. See W. Va. Code §6C-2-4(a)(4)

A grievant may choose to proceed at level one, even if he or she was entitled to proceed directly to level three but may not then skip level two if he or she is unsuccessful at level one.

## **Will I have the same administrative law judge at Level Three as I had at Level Two?**

No. A different ALJ will be assigned to conduct the level three hearing and draft the level three decision. The ALJ who conducted the level two mediation is considered to be 'conflicted out' of any and all further proceedings after the mediation is completed.

## **What happens at Level Three?**

Upon receiving a request for a level three hearing, the Grievance Board will assign an ALJ to conduct a hearing. The Grievance Board will notify all parties including representatives of the assignment. Once notified of the assignment, the parties will deliver all documents and correspondence to the ALJ assigned to conduct the hearing.

The ALJ may conduct a prehearing conference with the parties or their representatives, in person or by telephone, to explore and resolve matters to expedite the grievance process.

The level three hearing is a relatively formal proceeding with certain rules and procedures that must be followed.

The hearing is recorded digitally on audio. The party having the burden of proof will proceed first. Each side will have the opportunity to call witnesses to testify and grievants may testify on their own behalf. Each party has the right to ask questions of any witness the other side calls to testify. Witnesses may participate by telephone

at the discretion of the ALJ, but this must be requested in writing prior to the hearing, absent an emergency.

At the conclusion of the hearing, the parties will have the opportunity to submit written Proposed Findings of Fact and Conclusions of Law. This is an opportunity for the parties to provide a written argument about the evidence and the law relating to the grievance. To assist in preparing this document, a copy of the audio recording can be requested from Grievance Board staff.

### **I don't have a lawyer or a representative, what should I do to prepare for my level three hearing?**

Make sure to read and follow the instructions of any document you receive from the Grievance Board. Your Notice of Hearing will contain deadlines to submit a list of your witnesses and to request subpoenas. You are also required to follow the procedural rules of the Grievance Board, so be sure to review them.

If the burden of proof is yours, you must present evidence in the form of testimony and/or documents to prove your case. Testifying on your own behalf alone may not be enough to prove your case, so it is important to consider prior to your hearing what documents or other witnesses support your claim. It may be helpful to write down questions to ask the witnesses. Follow the instructions in your Notice of Hearing and the procedural rules to make sure you can present that evidence in your hearing.

You can find previous decisions that have been made on grievances similar to yours to assist you in understanding the law relating to your grievance, what evidence may be important, and what you may wish to include in your written Proposed Findings of Fact Conclusions of Law. [Case Search](#)

### **Do I have options regarding representation during a grievance?**

Employees are entitled to representation at any step of the procedure, including meetings held for the purpose of discussing or considering disciplinary action, prior to the filing of a grievance. See W. Va. Code §6C-2-3(g)(1); 156 C.S.R. 1 § 8

Each party in a grievance is entitled to have a representative act on their behalf during all levels of the grievance process. Representatives can include: any employee organization, fellow employee, attorney or other person designated by the grievant or intervenor as his or her representative. However, a representative may not include a supervisor who evaluates the grievant. See W. Va. Code §6C-2-2(n).

### **Does the Grievance Board provide representation to employees or employers?**

No. The Grievance Board does not provide representation to any party of a grievance. Additionally, the Grievance Board will not recommend a representative to any party of a grievance. Obtaining representation is the sole responsibility of each party involved in a grievance proceeding.

### **Who has the burden of proof in a grievance?**

The grievant bears the burden of proving their case, except in disciplinary matters, where the burden of proof is on the employer to prove the action taken was justified.

Probationary employees grieving the termination of their employment for non-disciplinary reasons must prove that their services were satisfactory.

At-will employees grieving the termination of their employment must allege and prove that the motivation for their termination was to contravene some substantial public policy.

### **Can I discuss my grievance with employees of the Grievance Board or Board members?**

No. Informal communications regarding your grievance are not allowed. This means that aside from formal hearings and documents, parties may not confer or correspond with any member of the Board, ALJ, staff, or

agents, concerning the merits or substance of a pending grievance. All parties must be present when discussing your grievance and all parties must receive copies of documents you intend to use as part of your grievance. Any one-sided communication is improper, and must be promptly disclosed to the other parties involved in your grievance.

### **How do I request subpoenas?**

Any party that wishes to obtain subpoenas must submit a written request to the Grievance Board, and all other parties to the grievance must be copied on the request. The request shall include the full name and address of each person to be subpoenaed. (Work addresses are sufficient.) The ALJ assigned to the grievance will review the request and approve or deny the request. If approved, the Board will prepare the subpoenas and the originals will be mailed (or picked up by) the requesting party. See W. Va. Code §29A-5-1(b); 156 C.S.R. 1 § 6.5.

### **Do I have to serve the subpoenas myself?**

Yes. The party that requests the subpoenas is responsible for the service and all related costs. (i.e. mileage and fees) See W. Va. Code §29A-5-1(b)

### **How do I obtain documents from my employer for the level three hearing?**

You should request documents as soon as possible. Send your request to your employer in writing, listing the documents you want to obtain. Your employer must produce any document you request that is relevant and not privileged. If there is a dispute about the request, you must attempt to resolve the disagreement yourself, but if you cannot do so, you may request that the ALJ order your employer to produce the documents. You may request such an order by written motion that states you have attempted to resolve the dispute and why the documents are needed. 156 C.S.R. §§ 6.12, and 6.12.2.

You may also request that the ALJ issue a subpoena duces tecum, which requires an individual to appear at the level three hearing and to bring the document(s) described in the subpoena duces tecum to the hearing. The request for a subpoena duces tecum is made in the same manner as a request for a subpoena. 156 C.S.R. §§ 2.1.9 and 6.5.

### **Am I required to take annual leave to attend my grievance/hearing?**

No. Grievants (and their representative/counsel if applicable) shall be granted reasonable and necessary time off, during work hours, to attend grievance proceedings without loss of pay and without charge to annual leave. See W. Va. Code § 6C-2-3(p)(1)

### **What do I do if I need to postpone my mediation session or level three hearing?**

This is called a "continuance." The party requesting the continuance must first attempt to obtain an agreement to the continuance from all parties and obtain five agreed dates for rescheduling the mediation session or level three hearing. The party must then request the continuance in writing from the Grievance Board, with a copy to all other parties. The statement must include the reasons why the continuance is needed, a statement as to whether the other parties have agreed to the continuance, and the five agreed dates for rescheduling the mediation session or level three hearing. The ALJ assigned to the grievance will decide whether the continuance request will be granted. 156 C.S.R. 1 § 6.7.

### **Can adverse actions be taken against me by my employer for filing a grievance?**

No. Reprisal or retaliation of any kind may not be taken by an employer against a grievant or participant of any grievance proceeding because of his or her participation. Reprisal or retaliation constitutes a grievance. See W. Va. Code § 6C-2-3(h)

## **Does the Grievance Board provide legal advice?**

No. Employees of the Grievance Board cannot give legal advice to any party to a grievance or to any employee, employer, or representative of an employee or employer. The Grievance Board website does offer a search feature where employees and employers can find past synopsis and full case decisions that may benefit them.

## **Are grievance documents public record?**

Documents related to the filing of a grievance are not public record and not open to public inspection. Decisions issued by the Grievance Board are made available to the public once all parties involved in a grievance have received notification of the final decision. The Grievance Board website provides a searchable database of all final decisions issued.

## **Where can I find the laws and rules that govern the grievance procedure?**

Information concerning the laws and rules can be found in W. Va. Code §6C-2-1 through §6C-2-8 and Title 156 Series 1 of the WV Code of State Rules. Links to these documents can be found below.

**[West Virginia Public Employees Grievance Procedure](#)**

**[West Virginia Public Employees Grievance Procedure Rule](#)**

## **Can I fax or email my grievance forms to the Grievance Board?**

Yes. The Grievance Board accepts grievance forms (at any level of the grievance procedure) via fax or e-mail.

Fax: (304) 558-1106

Email: **[wvgb@wv.gov](mailto:wvgb@wv.gov)**

**I would recommend you call to confirm receipt of your email or fax.**

Complied by:

Amy Pitzer  
ACCE representative  
Concord University  
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