



West Virginia Department of Transportation Policy: **GRIEVANCE POLICY**

Issued by the Secretary of Transportation

Policy No: DOT 3.5

Issue Date: 07/01/2007

Revised: 06/26/2023

Page 1 of 23

1.0 INTRODUCTION

Included in this policy is the West Virginia Department of Transportation (WVDOT) process for conducting Level One grievances and a discussion of the participants' rights and responsibilities. It is the goal of the agency to provide a prompt and equitable answer to employees' complaints in compliance with all statutory and regulatory requirements.

This policy supplements West Virginia Code §6C-2-1 *et seq.*, "West Virginia Public Employees Grievance Procedure." To ensure an understanding of the employee's and employer's rights and responsibilities, a complete review of this policy, including the appendices and the referenced article of the statute is recommended.

2.0 SCOPE

This policy explains the grievance process that all WVDOT employees, except employees of the West Virginia Parkways Authority, are to follow. The Grievance Evaluators are designees of the Secretary of the Department of Transportation (Secretary) and the Commissioner of the agencies within the WVDOT. The authority of the Grievance Evaluators is derived from the Secretary and the applicable Commissioner.

3.0 DEFINITIONS

- 3.1 **Administrative Law Judge**: means a West Virginia licensed attorney employed by the Grievance Board to adjudicate public employee grievances through the process established in West Virginia Code §6C-2-1 *et seq.*
- 3.2 **Agency**: means any authority, bureau, commission, or Division or similar cabinet subpart of the WVDOT.
- 3.3 **Agency Head or Commissioner**: means the chief executive officer of an agency, including the Chief Administrator.
- 3.4 **Chief Administrator**: means the Secretary of the WVDOT, an Agency Head or Commissioner and includes one or more designees with the authority designated by the Chief Administrator, appointed to handle any aspect of the grievance procedure at Level One.
- 3.5 **Designated Day Off**: means a day that the workplace is legally closed under the authority of the Chief Administrator. It is not usually observed as a holiday, a Saturday, or a Sunday. It may be a special day of remembrance or honor. For

Policy: **GRIEVANCE POLICY**

WEST VIRGINIA DEPARTMENT OF TRANSPORTATION

Policy No: DOT 3.5

Issue Date: 07/01/2007

Revised: 06/26/2023

Page 2 of 23

example, the Governor may issue an Executive Proclamation declaring a day off for public employees to observe "Juneteenth" or close state offices due to inclement weather.

3.6 **District Manager**: means the administrative head of the District regardless of whether the person is an engineer or another classification.

3.7 **Division Director**: means the administrative head of a WVDOT Division.

3.8 **Employee**: means a person who lawfully occupies a position in a WVDOT agency and who is paid a wage or salary and who has not severed the employee-employer relationship.

3.9 **Grievance**: means a claim by an employee alleging a violation, a misapplication, or a misinterpretation of the statutes, policies, rules, or written agreements applicable to the employee including:

- A. Any violation, misapplication, or misinterpretation regarding compensation, hours, terms and conditions of employment, employment status, or discrimination;
- B. Any discriminatory or otherwise aggrieved application of unwritten policies or practices of his or her employer;
- C. Any specifically identified incident of harassment;
- D. Any specifically identified incident of favoritism; or
- E. Any action, policy, or practice constituting a substantial detriment to or interference with the effective job performance of the employee or the health and safety of the employee.

"Grievance" does not mean:

- 1. Any pension matter or other issue relating to public employees' insurance, in accordance with §5-16-1 *et seq.* of this code, retirement, or any other matter in which the authority to act is not vested with the employer; and
- 2. any matter relating to the protected classes set forth in §5-11-1 *et seq.* of this code.

3.10 **Grievance Board**: means the West Virginia Public Employees Grievance Board established to provide an administrative process to redress public employees' grievances.

Policy: **GRIEVANCE POLICY**

WEST VIRGINIA DEPARTMENT OF TRANSPORTATION

Policy No: DOT 3.5

Issue Date: 07/01/2007

Revised: 06/26/2023

Page 3 of 23

- 3.11 **Grievance Evaluator**: means the person designated by the Agency Head, Commissioner, or Secretary to conduct the Level One conference or hearing and make a decision on behalf of the agency.
- 3.12 **Personally Identifiable Information or PII**: means all information that identifies, or can be used to identify, locate, contact, or impersonate a particular individual. PII also includes Protected Health Information (PHI).
- 3.13 **Work or Working Day**: means any day of the week except Saturday, Sunday, or legal holidays during the agency or division's scheduled work time.

4.0 WVDOT GRIEVANCE PROCEDURE

WVDOT strives to resolve problems at the lowest possible administrative level. Grievances will be resolved in a fair, efficient, cost-effective, and consistent manner to maintain good employee morale, enhance employee job performance and better serve the citizens of the State of West Virginia.

4.1 RIGHTS AND RESPONSIBILITIES OF THE GRIEVANT AND EMPLOYER

- A. No reprisal of any kind shall be taken against the grievant or his or her representative or any interested or participating party, including witnesses.
- B. A grievant may choose an employee organization representative, an attorney, or any other person, including a fellow employee, to represent and assist him or her in the preparation and presentation of the grievance.
- C. For purposes of grievance preparation, the grievant shall be granted a maximum of four (4) hours per grievance during work hours without loss of pay or use of annual or compensatory leave.
- D. An employee representing another employee is limited to four (4) hours per grievance during a workday to prepare for and represent a grievant. In order to limit disruption and productivity in the workplace, an employee representing another employee may participate in no more than five (5) grievances in a calendar year.
- E. Time off for grievance preparation and representation must be requested in advance by giving the employee's supervisor a completed leave slip with the Hours Grievance Prep/Hearing Section utilized. Annual leave is not permitted to be used for a grievance hearing or conference.
- F. Activity code "007" will be used by West Virginia Division of Highways (WVDOT) to account for time spent in grievance preparation and attending

Policy: **GRIEVANCE POLICY**

WEST VIRGINIA DEPARTMENT OF TRANSPORTATION

Policy No: DOT 3.5

Issue Date: 07/01/2007

Revised: 06/26/2023

Page 4 of 23

the grievance proceeding, except for the Maintenance Work Force, which will use code "807."

- G. Per W. Va. Code §6C-2-3(p)(2), "the first responsibility of any employee is the work assigned to the employee. The employee may not allow grievance preparation and representation activities to seriously affect the overall productivity of the employee."
- H. Employees attending a grievance proceeding will not receive a reduction in their regular salary, wage, rate of pay, or other benefits because of attendance. Employees are not permitted to take leave for any part of the grievance process; the law requires the employee to be on work time.
- I. The grievant shall have access to the employer's equipment (including copy machine) for the purpose of preparing grievance documents, subject to the WVDOT policy governing the use of equipment. WVDOH employees may be allowed to use a state vehicle to attend conferences and hearings held off site if a vehicle is available. Employees will not be reimbursed for use of a personal vehicle to attend a grievance conference or hearing.
- J. All Level One proceedings shall be at a convenient place for all parties as determined by the Grievance Evaluator. The location of the Level Two Mediation and Level Three hearing shall be set by the West Virginia Public Employees Grievance Board Administrative Law Judge assigned to the grievance.
- K. An employee may proceed directly to Level Three with agreement of the employer, or when the employee is:
 - 1. Discharged;
 - 2. Suspended without pay; or
 - 3. Demoted or reclassified, resulting in a loss of compensation or benefits.
- L. Any expenses incurred relative to the grievance procedure at Levels One, Two, or Three shall be borne by the party incurring the expenses unless the agency chooses to provide otherwise.
- M. Decisions rendered at all levels of the grievance procedure must be transmitted to the grievant in writing and must include the following: the date of the decision; the reason(s) for the decision; and, if the grievance is denied, the name and address of the individual at the next level to whom an appeal may be made. Time limits for the three levels of the grievance procedure are in Section 4.2 of this Policy.

Policy: **GRIEVANCE POLICY**

WEST VIRGINIA DEPARTMENT OF TRANSPORTATION

Policy No: DOT 3.5

Issue Date: 07/01/2007

Revised: 06/26/2023

Page 5 of 23

4.2 TIME LIMITS AND PROPER FILING

- A. Grievances must be properly filed. The original signed grievance form may be mailed using the U.S. Postal Service, or sent via email, to the Chief Administrator, with a copy mailed or emailed to the West Virginia Public Employees Grievance Board. The addresses are as follows, with WVDOT employees excluding DMV utilizing the WVDOH Chief Administrator:
1. Chief Administrator
West Virginia Department of Transportation
West Virginia Division of Highways
1900 Kanawha Boulevard, East
Building 5, Room 637
Charleston, WV 25305
DOHGrievances@wv.gov (preferred); or

West Virginia Department of Transportation
West Virginia Division of Motor Vehicles
Post Office Box 17300
Charleston, WV 25317
DMVGrievances@wv.gov (preferred); or

West Virginia Department of Transportation
West Virginia Division of Multimodal Transportation Facilities
1900 Kanawha Boulevard, East
Building 5, Room 637
Charleston, WV 25305
DOHGrievances@wv.gov (preferred)
 2. West Virginia Public Employees Grievance Board
1701 5th Avenue, Suite 2
Charleston, West Virginia 25387
WVGB@wv.gov
- B. The time limits involved in filing a grievance or appealing a decision may be extended to a certain date by mutual written agreement and shall be extended when a grievant or the representative for either party are not working because of an accident, sickness, death in the immediate family, or other cause for which the grievant or a representative has approved leave from his or her employment.
- C. Any assertion by the employer that the filing of the grievance at Level One was untimely must initially be asserted by the employer at Level One or before the Level Two proceeding. The Grievance Evaluator will issue an appealable decision on an allegation of untimely filing at Level One before any other issue may be considered or decided.

Policy: **GRIEVANCE POLICY**

WEST VIRGINIA DEPARTMENT OF TRANSPORTATION

Policy No: DOT 3.5

Issue Date: 07/01/2007

Revised: 06/26/2023

Page 6 of 23

- D. The grievant or the employer prevails by default if a required response is not made within the required time limits (see Section 7.0, below), unless the grievant or the grievant's representative or the employer's representative is prevented from doing so directly as a result of injury or illness or a justified delay not caused by negligence or intent to delay the grievance process.
- E. Within 10 days of the default, the grievant or the employer may file with the Grievance Evaluator a written notice of intent to proceed directly to the next level, or to enforce the default. If the Grievance Evaluator or the employee objects to the default, he or she may, within five (5) days of the filing of the notice of intent, request a hearing before an administrative law judge for the purpose of stating a defense to the default or showing that the remedy requested by the prevailing party is contrary to law or contrary to proper and available remedies.
- F. If the administrative law judge finds that the employer or grievant has a defense to the default, or that the remedy is contrary to law or not proper or available by 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 appealing party whole.

5.0 WVDOT GRIEVANCE PROCESS

The following sections list the steps and specific responsibilities for the WVDOT grievance process. For a brief synopsis of the time limits for each step, see Appendix A at the end of this Policy.

5.1 RESPONSIBILITY OF GRIEVANCE EVALUATOR

- A. Grievance filings at all levels of the grievance process must start with the Grievance Evaluator as the designee of the Chief Administrator. The Grievance Evaluator has the authority to handle any aspect of the grievance procedure at Level One. Each agency's Commissioner or Agency Head is responsible for applying this policy to his or her own organization.
- B. Grievance Evaluators are bound by the West Virginia Ethics Commission's legislative rule, Code of Conduct for Administrative Law Judges, 158 CSR 13.

5.2 THE THREE LEVELS OF THE GRIEVANCE PROCESS

- A. Level One – Internal Grievance Evaluator

Policy: **GRIEVANCE POLICY**

WEST VIRGINIA DEPARTMENT OF TRANSPORTATION

Policy No: DOT 3.5

Issue Date: 07/01/2007

Revised: 06/26/2023

Page 7 of 23

1. The grievant may file a written grievance on a West Virginia Public Employees Grievance Form with the Chief Administrator and submit a copy to the West Virginia Public Employees Grievance Board. The grievance will then be assigned to a specific grievance evaluator.
2. Form must be filed:
 - a. Within 15 working days (excluding Saturdays, Sundays, and official holidays) following the grievable event; or,
 - b. Within 15 working days of when the grievant knew or should have known of the grievable event; or,
 - c. Within 15 working days of the most recent occurrence of a continuing practice.
 - d. When computing time, the day of the act, event, default, or omission from which the applicable period begins to run is not included. The last day of the period so computed is included, unless it is a Saturday, a Sunday, a legal holiday, or a designated day off in which event the prescribed period of time runs until the end of the next day that is not a Saturday, Sunday, legal holiday, or designated day off.
 - e. When an act must be done on a date certain, if the particular date designated falls on a Saturday, Sunday, legal holiday, or designated day off, then the date on which the act, event, default, or omission is required or allowed to occur is the next day that is not a Saturday, Sunday, legal holiday, or designated day off.
 - f. The written grievance must state the nature of the grievance and the relief requested, including a clear explanation of the issue being grieved. Information must be complete, including an employee's name, address, telephone number, email address and representative name and contact information when applicable. The grievance must be signed and dated by the employee.
 - g. On the grievance form, the grievant may request either a Level One conference or a hearing.
 - h. Conferences and hearings must be held within 20 working days of receipt of the written grievance.

Policy: **GRIEVANCE POLICY**

WEST VIRGINIA DEPARTMENT OF TRANSPORTATION

Policy No: DOT 3.5

Issue Date: 07/01/2007

Revised: 06/26/2023

Page 8 of 23

- i. The Grievance Evaluator must issue a written decision to the grievant or his or her representative within 20 working days of the conference.
- j. The Grievance Evaluator has the authority to decide all issues raised in connection with a Level One grievance including but not limited to motions to dismiss, records request, disputes, motions for default, and any substantive issue raised at the conference or hearing.
- k. The Grievance Evaluator may choose to record the Level One conference to aid in writing the decision. No transcript will be made. The recording, if any, will not be provided to the parties or their representatives. The recording will be destroyed after the report has been issued.
- l. The Level One hearing will be recorded and a copy of the recording or transcript will be provided to any party upon request. It is within the sole discretion of the Grievance Evaluator whether to provide a recording or a transcript.

B. Level Two – Alternative Dispute Resolution (ADR)

- 1. A grievant may file a written request for ADR with the West Virginia Public Employees Grievance Board within 15 working days of receiving an adverse Level One written decision. A copy of the appeal must be filed with the Grievance Evaluator.
- 2. In the appeal, the grievant may request mediation conducted by an Administrative Law Judge of the Board, private mediation, or private arbitration. If no selection is made, mediation will be conducted by an Administrative Law Judge of the Board at no cost to the parties.
- 3. Mediation, private mediation, or private arbitration must be scheduled within 20 working days of the grievant's request.
- 4. Agreements reached through mediation and decisions issued through arbitration shall be documented in writing within 15 working days of the mediation or arbitration. Agreements and decisions are binding and enforceable.
- 5. If no settlement is reached through mediation, the Administrative Law Judge or mediator may provide a written summary of the issues presented and issue a scheduling and discovery order that is binding upon the parties. The decision of the ALJ may be appealed to Level Three hearing within 15 working days of mediation.

Policy: **GRIEVANCE POLICY**

WEST VIRGINIA DEPARTMENT OF TRANSPORTATION

Policy No: DOT 3.5

Issue Date: 07/01/2007

Revised: 06/26/2023

Page 9 of 23

C. Level Three – Hearing and Adjudication

1. Within 10 working days of receiving a report stating that ADR at Level Two was unsuccessful, the grievant may file a written appeal to Level Three with the West Virginia Public Employee Grievance Board. A copy of the appeal must be filed with the Grievance Evaluator.
2. An Administrative Law Judge will provide a hearing within 30 days of receiving the appeal. This does not mean the hearing will be held within 30 days, rather, a certain date will be scheduled for the hearing. The hearing and any other deadlines should be scheduled within a reasonable time in consultation with the parties.
3. The Administrative Law Judge must issue a written decision within 30 working days of the hearing. A copy of the decision will be sent to all parties in the grievance and the Grievance Evaluator.
4. The decision of the Administrative Law Judge is final upon the parties.
5. An appeal of a Level Three decision may be made by either party. It must be filed with the Intermediate Court of Appeals for any final judgments, orders, or decisions of the Grievance Board within 30 working days of receipt of the Administrative Law Judge's decision. A separate motion to stay the decision may also be filed.

6.0 Rules of Conduct for Participants in Level One Grievances

A conference at Level One is an informal process designed to allow the parties to discuss the issue or issues in an informal, non-adversarial setting. The parties may have a co-worker, family, friend, union representative, or attorney (representative) assist them at the conference. Keep in mind that the goal is to resolve each grievance at the lowest level possible. A hearing at Level One is more formal and involves each party to present their case in an orderly manner by presenting witness testimony and possibly documents.

The express statutory purpose of the employee grievance process is to provide a process for resolving grievances at the lowest possible level in a fair, efficient, cost-effective, and consistent manner. Nothing in the law prohibits informal disposition of grievances by stipulation or settlement agreed to in writing by the parties. The 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. W.Va. Code §6C-2-1.

Policy: **GRIEVANCE POLICY**

WEST VIRGINIA DEPARTMENT OF TRANSPORTATION

Policy No: DOT 3.5

Issue Date: 07/01/2007

Revised: 06/26/2023

Page 10 of 23

6.1 Rules for Decorum

- A. All participants are expected to treat each other, witnesses, and the Grievance Evaluator with respect.
- B. Abusive behavior will not be tolerated and may be grounds for the participant to be removed from the administrative conference or hearing.
- C. Parties and representatives may not behave in any manner that a reasonable person in the position of the affected party would see as intended to intimidate that person (whether party, witness, or other participant) into not participating in the process or meaningfully modifying their participation in the process or their testimony.
- D. Participants will not yell, use profanity, aggressive, or bullying language unless such language is part of the information they are relaying in response to a question. In which case, the information will be relayed in a calm tone and conversational manner. For example: Mr. A do you remember what your supervisor said to you? I remember exactly what he said; he was yelling at me and said I should "quit being a whiney little girl and get back to work".
- E. It is expected that all participants will be honest and forthright throughout the administrative conference or hearing.
- F. Only the parties and their representatives, and other individuals deemed necessary by the Grievance Evaluator are allowed in the conference or hearing. The Grievance Evaluator may allow witnesses to participate and will determine if and when the witness is allowed to be in the room.
- G. If the conference or hearing occurs virtually, the Grievance Evaluator will determine if witnesses will be allowed to be in the room during the course of the hearing.
- H. During the conference, or hearing, participants will not communicate in any way with anyone outside the proceeding regarding anything related to the conference or hearing; this includes text messages, social media messaging or posting; etc.
- I. The only recording that may be made in an administrative conference or hearing is by the Grievance Evaluator to assist in making a decision. No one will be given access to or copies of the conference recording. If a hearing decision is appealed, a transcript will be prepared and sent to the Grievance Board along with the evidentiary record.

Policy: **GRIEVANCE POLICY**

WEST VIRGINIA DEPARTMENT OF TRANSPORTATION

Policy No: DOT 3.5

Issue Date: 07/01/2007

Revised: 06/26/2023

Page 11 of 23

- J. Participants must indicate a desire to speak and then wait until it is their turn or the Grievance Evaluator invites them to speak. Talking over one another is not communicating.
- K. Parties or their representatives may request reasonable breaks. The Grievance Evaluator may set limits on the number, timing, and duration of breaks. A witness must answer any pending question before taking a break.
- L. The Grievance Evaluator may address questions and requests to the witness, or to the parties' representatives. If the Grievance Evaluator specifically asks a person to respond, the representative may not respond for them.
- M. Except for scheduling and other such administrative matters, parties and representatives are not permitted to have contact with the Grievance Evaluator without the other party also being present or copied on the communication. This applies throughout the time that a case is pending before the Grievance Evaluator.
- N. Parties may submit documents prior to the conference or hearing as well as at the conference. Any documents submitted prior to the conference must be submitted to the other party and their representative if they have one. A party or representative may object to the documents being considered. If there is an objection to a document, the Grievance Evaluator will discuss that with the parties and representatives at the beginning of the conference or hearing and will make a determination as to its admissibility.

6.2 Rules for Questioning

CAUTION: Although the grievance statute allows non-attorney representatives, the West Virginia Supreme Court of Appeals has ruled that lay representatives may not perform any activity that lawyers normally perform. This includes, but is not limited to, discovery requests, cross-examination, making legal arguments, and applying the law to the facts. Non-attorney representatives should use caution not to engage in the unauthorized practice of law. Non-attorney representatives should read the Court's decision in *West Virginia Department of Health and Human Resources v. C.P. , 857 S.E. 2d 622 (2021)* for guidance.

- A. Questions must be neutral in tone.
- B. Neither a party nor a representative may yell, scream, badger or physically "lean in" to a party or witness's personal space. A party or representative

Policy: **GRIEVANCE POLICY**

WEST VIRGINIA DEPARTMENT OF TRANSPORTATION

Policy No: DOT 3.5

Issue Date: 07/01/2007

Revised: 06/26/2023

Page 12 of 23

may not approach or speak to the other party or to a witness unless it is their turn to speak or with the permission of the Grievance Evaluator.

- C. A party or representative may not use profanity or make personal attacks upon a party or witness. Questions are used to gain knowledge or to understand a fact; they may not include accusations within the text of a question. For example: "When did you stop beating your wife?"
- D. A party or representative may not introduce information into evidence through questioning. This means that a party or representative may not ask questions in such a way that the question itself provides information not already in evidence. For example: "After Mr. A hid Mr. B's lunch on Tuesday, what did Mr. B do?" if no testimony or other evidence has been introduced that Mr. A hid Mr. B's lunch.
- E. A party or representative may not ask repetitive questions. When the Grievance Evaluator determines a question has been "asked and answered" or is not relevant, the representative must move to another question or topic.
- F. Questions should not solicit information that has been determined, before the conference or hearing, to be irrelevant or otherwise not admissible.
- G. Questions asked of the opposing party and witnesses may be asked in a leading, cross-examination style. (Isn't it true that ...) Questions asked of a party by the party's own representative must be asked in a non-leading, direct-examination style. (What did you do next?)
- H. Questions should be designed to obtain direct observations or facts, not personal opinions. For example: "What did you see" not "What would you think if you saw that happen?"
- I. If an objection is made to a question, the Grievance Evaluator must decide the objection to the question before it may be answered. The witness must wait for a ruling from the Grievance Evaluator before answering the question. The Grievance Evaluator has the sole authority to determine whether a question may be asked or answered.
- J. The Grievance Evaluator may determine that a question is not proper as asked or may not comply with this policy and may require the party or representative to rephrase the question or state the question in a manner that complies with this policy (respectful, neutral, non-abusive, and solicits facts).
- K. A party or representative may state that they have an objection to a question and the Grievance Evaluator will invite the party or representative to briefly state the objection. For all other instances, the Grievance

Policy: **GRIEVANCE POLICY**

WEST VIRGINIA DEPARTMENT OF TRANSPORTATION

Policy No: DOT 3.5

Issue Date: 07/01/2007

Revised: 06/26/2023

Page 13 of 23

Evaluator may invite the other party or representative to respond if the Grievance Evaluator wishes to obtain their input regarding the objection.

6.3 Consequences for Violations of The Rules of Decorum

- A. If the Grievance Evaluator determines that a party or representative has violated the Rules of Decorum, the Grievance Evaluator will provide the participant with one (1) opportunity to correct their behavior.
- B. If the Grievance Evaluator determines that the party or representative continues to violate these Rules, the Grievance Evaluator may either limit that individual's participation moving forward or remove the individual from the administrative conference.
- C. If the Grievance Evaluator determines that a party continues to violate these Rules, the party may be required to participate remotely to avoid further confrontation or escalation. The Grievance Evaluator may recess the conference to a time or date and time certain to allow the offending party to regain his or her composure.
- D. For repeated violations or egregious behavior, as determined by the Grievance Evaluator, a representative may be prohibited from serving as a representative in the WVDOT Level One grievance process.
- E. If a representative is removed from the administrative conference or hearing, the impacted party may either continue without a representative, represent themselves, or select a new representative for the remainder of the administrative conference or hearing.
- F. If the party wishes to have a new representative, the conference or hearing may be postponed if necessary to allow for the selection of a new representative.
- G. Any action taken by the Grievance Evaluator regarding violation of the Rules of Decorum or removal of participants will be documented in the record.
- H. If an agency representative violates the conduct and decorum provisions of this policy, the Grievance Evaluator may consult with the person's supervisor.

Policy: **GRIEVANCE POLICY**

WEST VIRGINIA DEPARTMENT OF TRANSPORTATION

Policy No: DOT 3.5

Issue Date: 07/01/2007

Revised: 06/26/2023

Page 14 of 23

7.0 Rules of Procedure for Level One Grievance Hearings

7.1 Applicability

This policy applies to everyone who participates in a WVDOT Level One Grievance Hearing. The Level One Grievance Evaluators are appointed and are the designees of the Secretary or the applicable Commissioner of a WVDOT agency. The decision of the Grievance Evaluator is the same as if issued by the Secretary or a Commissioner. Grievance Evaluators have full and complete authority to preside over and control all aspects of conferences and hearings. If, in the determination of the Grievance Evaluator, an individual present at a hearing is engaging in disruptive conduct, the Grievance Evaluator may, in the Evaluator's 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.

7.2 Time

A. Computation

1. The time computation begins with day one being the day after the hearing or conference. Saturdays, Sundays, official holidays, and designated days off are excluded. The last day of the period so computed is included, unless it is a Saturday, a Sunday, a legal holiday, or a designated day off in which event the prescribed period of time runs until the end of the next day that is not a Saturday, Sunday, legal holiday, or designated day off.
2. When an act must be done on a date certain, if the particular date designated falls on a Saturday, Sunday, legal holiday, or designated day off, then the date on which the act, event, default, or omission is required or allowed to occur is the next day that is not a Saturday, Sunday, legal holiday, or designated day off.

B. Extension

1. The specified time limits may be extended to a date certain at the request of a party, representative, or intervenor, at the discretion of the Grievance Evaluator for good cause shown and shall be extended whenever a grievant or agency representative is not working because of accident, sickness, death in the immediate

Policy: **GRIEVANCE POLICY**

WEST VIRGINIA DEPARTMENT OF TRANSPORTATION

Policy No: DOT 3.5

Issue Date: 07/01/2007

Revised: 06/26/2023

Page 15 of 23

family or other cause for which the person has approved leave from employment.

7.3 Service

A copy of all documents anticipated to be presented at a Level One conference or hearing must be sent to all parties, representatives, and the Grievance Evaluator five (5) days before the conference or hearing.

7.4 Default

A party may prevail by default if the other party fails to provide a required response within the time limits established by statute, this policy, or by the Grievance Evaluator. An administrative law judge will make a determination on the issue of default before any hearing or other activity is undertaken.

7.5 Requests for discovery

Either party, or his or her attorney representative, or an intervenor may request copies of documents, emails, policies, rules, and other such documents that are relevant to the grievance. The documents should be requested by sending a written request to the attorney representing the employer or directly to the grievant and in all cases, to the Grievance Evaluator. The Grievance Evaluator will determine whether the request for discovery will be granted, modified, or denied should a question or issue arise. The Grievance Evaluator will also set a time frame for providing the information requested.

7.6 Requirements for Providing Documents and Redacting PII

- A. Employee information that is considered to be a public record as well as information that is releasable under the Freedom of Information Act (FOIA) may be produced in response to a discovery request.
- B. Public record information, which includes basic employee information, such as name, salary, title and where employed is generally releasable to the public.
- C. FOIA information that may be released to a requester under FOIA includes the following:
 - Information relating to qualifications for employment.
 - Position descriptions, critical elements, and performance standards.
 - Postgraduate or technical training relating to the current position.
 - Earlier employment experience.
 - Earlier employment experience, but not salary, in the private sector if related to current duties.

Policy: **GRIEVANCE POLICY**

WEST VIRGINIA DEPARTMENT OF TRANSPORTATION

Policy No: DOT 3.5

Issue Date: 07/01/2007

Revised: 06/26/2023

Page 16 of 23

- Membership in professional groups.
- Awards, honors, and letters of commendation from professional associations and colleges.

D. The following information may be shared through discovery without the need for intervention by the Grievance Evaluator. However, should issues arise the Grievance Evaluator will determine what documents are to be produced.

- Social Security Number and taxpayer-identification numbers: Use only the last four (4) digits.
- Dates of Birth: Only the year of birth can be left if necessary.
- Names of Minor Children: In the case of minor children, only initials are permitted.
- Home Address: If a home address must be included, use only the city and state.
- Business Address.
- Business phone numbers and email addresses.
- Financial Account Numbers: Identify the name or type of account and the financial institution where it is maintained but use only the account number's last four (4) digits.
- DOT 12s. Names and the last four (4) numbers of the social security number can be shared as well as the hours for employees and other information on the form.
- Application packets, the applicants' names and work history may be shared.
- Classification and compensation (it's public information).
- PII of the individuals named in the records sought must be redacted.
- Follow any additional Grievance Evaluators' requests or orders about the redaction of sensitive information based on the case.

The PII redacted should not include employee names, work locations and addresses, names of supervisors or business addresses for work outside of WVDOT. Driver's license numbers, including CDL license numbers, should be redacted if they are included in the packets.

Policy: **GRIEVANCE POLICY**

WEST VIRGINIA DEPARTMENT OF TRANSPORTATION

Policy No: DOT 3.5

Issue Date: 07/01/2007

Revised: 06/26/2023

Page 17 of 23

Redaction of PII in accordance with this policy means utilizing a stamp or other method to completely obscure the PII so that a person receiving a copy of the redacted document cannot determine the redacted information. Do not redact the original document. On a copy, using a thick tipped, permanent, black marker, mark through the information to be redacted. Make sure the information is not readable. Make a copy of the redacted copy to produce as requested. Obscuring stamps may be used. Whiteout and similar products are not acceptable as they may be removed from the document or the information may be readable.

7.7 Requests for Continuance

A request for continuance may be granted by the Grievance Evaluator upon request of a participant for good cause shown. Good cause means a person whose participation in the hearing is essential but is not available because of illness, injury, an unexpected event that makes an essential person unavailable or other similar circumstance. Granting or denying a request for a continuance is solely at the discretion of the Grievance Evaluator.

7.8 Requests for Consolidation

- A. A request to consolidate two or more grievances may be granted by the Grievance Evaluator if the grievances involve or arise from the same set of facts or are similar in facts and circumstances.
- B. A grievance that has previously been dismissed may not be revived by being consolidated with another grievance.

7.9 Requests to Intervene and Grounds

Any employee may request to 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 or her rights or property and that his or her interest is not adequately represented by the existing parties.

7.10 Order of Proceedings

The Grievance Evaluator shall conduct the hearing in the following manner:

- A. The parties shall be given an opportunity to briefly present opening statements.
- B. Parties shall present their evidence in the order determined by the Grievance Evaluator.

Policy: **GRIEVANCE POLICY**

WEST VIRGINIA DEPARTMENT OF TRANSPORTATION

Policy No: DOT 3.5

Issue Date: 07/01/2007

Revised: 06/26/2023

Page 18 of 23

- C. Each witness shall be sworn or affirmed by the Grievance Evaluator and be subject to examination by the parties or their representatives. In the discretion of the Grievance Evaluator witnesses may be sequestered during the hearing.
- D. Parties have the right to introduce evidence on the points at issue and to ask questions of the witnesses present at the hearing as necessary for a full and true disclosure of the facts.
- E. All objections to procedure, admission of evidence or any other matter must be timely made and stated on the record with the reasons for the objection and will be decided by the Grievance Evaluator.
- F. When all the parties and witnesses have been heard, the parties shall be given the opportunity to present summary statements.
- G. Proposed findings of facts and conclusions of law may be requested by the Grievance Evaluator. If requested, the Grievance Evaluator must be served at the same time and by the same method as the parties within the timeframe set by the evaluator, or 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 circumstances, the time frame for submission should be no greater than 20 days.

8.0 APPENDICIES

8.1 Time Frame Table For Grievance Process

- A. All “days” designated below are workdays, exclusive of Saturdays, Sundays, official holidays, and designated days off.
- B. All decisions must be in writing.
- C. Appeals should be requested in writing. No reasons need to be stated for an appeal.

Policy: **GRIEVANCE POLICY**

WEST VIRGINIA DEPARTMENT OF TRANSPORTATION

Policy No: DOT 3.5

Issue Date: 07/01/2007

Revised: 06/26/2023

Page 19 of 23

Appendix A

Level One	Level Two	Level Three
Grievable Event	Grievance Evaluator's written decision	Summary of issues presented in ADR and scheduling or discovery order
15 days to file grievance with Grievance Evaluator with copy to Grievance Board	15 days to file appeal to Grievance Board and Grievance Evaluator for ADR	10 days to file appeal to Grievance Board and Grievance Evaluator
20 days to hold Conference; 20 days to hold Hearing	20 days to schedule ADR	Hearing held within "reasonable time" but must schedule in 30 days
20 days to issue Grievance Evaluator's written decision	If settlement or decision: 20 days to document. If no settlement or decision: 15 days to provide summary or order.	30 days to submit Administrative Law Judge's written decision (30 days to appeal)

8.2 WEST VIRGINIA PUBLIC EMPLOYEES' GRIEVANCE FORM

Grievance Form with notes are available on the next two (2) pages and at: Public Employees Grievance Board, 1701 5th Avenue Suite #2 Charleston, West Virginia 25387.

<https://pegb.wv.gov/forms/Pages/default.aspx>

Policy: **GRIEVANCE POLICY**

WEST VIRGINIA DEPARTMENT OF TRANSPORTATION

Policy No: DOT 3.5

Issue Date: 07/01/2007

Revised: 06/26/2023

Page 20 of 23

FOR INTERNAL USE ONLY
L2 ALJ:
L3 ALJ:
Topic:

West Virginia
Public Employees Grievance Board
Grievance Form for Levels 1, 2, and 3

Do not write above this line.

Grievant's information (Please print. All information is required)

DOCKET number: _____

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 phone number	Grievant's work telephone number	Representative's telephone number
Grievant's home email address	Grievant's work e-mail address	Representative's e-mail address
Grievant's job title or classification		

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)	Level Two (Choose one)	Level Three (Choose one)
☐ 1. Hearing	☐ 1. Mediation by ALJ	☐ 1. Hearing
☐ 2. Conference	☐ 2. Private Mediation (See instructions)	☐ 2. Submit on Level 1 Hearing Record
☐ 3. Default	☐ 3. Private Arbitration (See instructions)	
☐ 4. Proceed directly to Level 3 (See instructions)		
Date filed	Date filed	Date filed
Grievant's signature	Grievant's signature	Grievant's signature

1701 5th Avenue, Suite 2, Charleston, West Virginia 25387

Phone: (304) 558-3361
<http://www.pegb.wv.gov>

Toll-Free: (888) 747-6743
An Equal Opportunity Employer

Facsimile: (304) 558-1106
wvgb@wv.gov

Policy: **GRIEVANCE POLICY**

WEST VIRGINIA DEPARTMENT OF TRANSPORTATION

Policy No: DOT 3.5

Issue Date: 07/01/2007

Revised: 06/26/2023

Page 21 of 23

9.0 RELEVANT DOCUMENTS & MATERIALS

9.1 West Virginia Public Employees' Grievance Form

9.2 West Virginia Code § 6C-2; West Virginia Public Employee Grievance Procedure

https://pegb.wv.gov/forms/Documents/Grievance_Form.pdf

<https://code.wvlegislature.gov/6C/>

10.0 CHANGE LOG

October 26, 2020-

- Reformatted per Policies and Procedures Working Group, minor changes suggested.

June 16, 2023-

- This policy reflects the removal of WVDOT agencies from the Department of Administration's Division of Personnel (DOP).
- Corrected address for WVDOT, made grammar and punctuation corrections.
- Clarified authority of the Grievance Evaluator.
- Replaced Chief Administrator throughout with Grievance Evaluator.
- Added definitions.
- Added Rules of Conduct for Conferences and Hearings.
- Added Rules of Procedure for Conferences and Hearings.
- Added Enforcement for Violations of Rules of Conduct.
- Revised filing deadlines, required signatures and contact information for grievant and representatives, clarified authority to dismiss at Level One, require Administrative Law Judge to rule on dismissal order from Level One before hearing the merits, clarified when grievances may be consolidated, expanded good cause for rescheduling hearing or conference, reiterated that Grievance Evaluators and Administrative Law Judge's must abide by the Code of Conduct for Administrative Law Judges, limited employee representatives to

Policy: **GRIEVANCE POLICY**

WEST VIRGINIA DEPARTMENT OF TRANSPORTATION

Policy No: DOT 3.5

Issue Date: 07/01/2007

Revised: 06/26/2023

Page 22 of 23

five (5) grievances per year and allowed grievant and employee representatives four (4) hours of time per grievance to prepare for the grievance in accordance with statutory changes effective **June 9, 2023**.

Policy: **GRIEVANCE POLICY**

WEST VIRGINIA DEPARTMENT OF TRANSPORTATION

Policy No: DOT 3.5

Issue Date: 07/01/2007

Revised: 06/26/2023

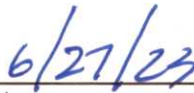
Page 23 of 23

Effective Date of Policy: 06/26/2023

Approved by:



Jimmy D. Wriston, P.E.
Secretary of
Transportation
Commissioner of
Highways



Date

*The Secretary of the West Virginia Department of Transportation or the Commissioner of Highways may, pursuant to the authority vested with the Secretary and Commissioner in W. Va. Code §5F-2-2, §17-2A-1 *et seq.*, and §17-2-1 *et seq.*, waive the requirements of this policy if the circumstances, in the Secretary or Commissioner's sole discretion, warrant such action.