Senate Bill 442
WV New Grievance Procedure
WV Code 6C-2-1 et seq.

Presented by:

West Virginia Education Association

WVEA

Definitions

- **Chief Administrator-** county superintendent, college president, or executive director of a RESA.
- **Day**- working days only. Not Saturday, Sunday, official holiday, and legal closure by the chief administrator.
- **Substitute Employees-** are considered employees only as to matters of violation, misapplication or misinterpretation of a statute, policy, rule or written agreement.
- **Grievance**- claim by employee alleging: harassment; a violation, misapplication or misinterpretation of statute, policy, rule, written agreement, compensation, hours, terms and conditions of employment, employment status, or discrimination (unless activity was agreed to by the employee or related to the actual job responsibilities); policy or practice constituting substantial detriment to or interference with employee's effective job performance or employee's health or safety.

Level I- The Chief Administrator

Grievance filed with the Chief Administrator within **15 Days** of the event.

- Written notice must include the nature of the grievance, the relief requested and a request for a conference or hearing.
- Grievance must also be filed with the grievance board.

Level I- Continued

- The Chief Administrator must hold a conference or hearing within **10 days** of receiving the grievance.
- The Chief Administrator must issue a written decision within **15 days** of the conference or hearing.
- The employee may proceed directly to Level 3 upon agreement of the employee and the chief administrator.
- If an employee is discharged, suspended without pay, or demoted/reclassified grievance goes directly to Level 3.

Level 2- Alternate Dispute Resolution (ADR)

- Within **10 days** of receiving an adverse decision at Level 1 grievant must file a request for mediation, private mediation or mediation-arbitration (med-arb).
- The Grievance Board shall schedule one of the ADR's within 20 days of the request.
- Mediators will issue a resolution/decision within **15 days** of the mediation/arbitration.

Level 2- Mediation

- Mediation conducted by an ALJ (Administrative Law Judge) at no cost to the parties.
- Parties may be represented and shall have the authority to settle the dispute.
- Agreements reached will be documented in writing within **15 days**.
- Agreements are binding and enforceable in WV by writ of mandamus.

Level 2- Private Mediation

- Parties agree in writing to retain a private mediator and share the cost.
- Mediator shall schedule the mediation within **20 days** and follow standard mediation procedures.
- Parties may be represented and shall have someone present with the authority to settle the dispute.
- Agreements reached will be reduced to writing within **15 days** of the mediation.
- Agreements reached are binding and enforceable in WV by writ of mandamus.

Level 2- Mediation-Arbitration (med-arb)

- Parties must agree in writing before the Med-Arb begins.
- ALJ conducts the Med-Arb at no cost to either party.
- If mediation fails to result in an agreement, the mediator *may* become an arbitrator and issue a decision in the matter.
- Agreements/Decisions are to be documented in writing within **15 days**.
- Agreements/Decisions are binding and enforceable in WV by writ of mandamus.

Level 2- Neutral Evaluation

- Within **15 days** of an unsuccessful mediation or med-arb the ALJ *may* issue a written summary to parties as a neutral evaluator stating the issues presented.

- Preparation for Level 3 Hearing.

Level 3- Adjudication

- Within **10 days** of receiving a report of an unsuccessful ADR, the grievant may file a written appeal with the employer and the board requesting a hearing.
- The ALJ shall schedule the hearing within a reasonable timeline in consultation with both parties.
- The ALJ may make a determination of bad faith and in extreme instances allocate costs of the hearing to the party found to be acting in bad faith.
- Within 30 days following a Level 3 hearing the ALJ shall issue a decision in writing to all parties.
- The decision of the ALJ is final upon the parties and enforceable in the circuit court of Kanawha County.

Appeal to Circuit Court of Kanawha County

- A party may appeal the decision within **30 days** to the Kanawha County Circuit Court on the following grounds:
  - Contrary to: law, adopted rule, written policy of employer.
  - Exceeds ALJ statutory authority.
  - Result of fraud or deceit.
  - Clearly wrong in view of evidence on whole record.
  - Arbitrary, capricious, abuse of discretion, clearly unwarranted exercise of discretion.

What has changed?

- Immediate Supervisor Conference eliminated.
- Local Board of Education Hearing eliminated.
- Alternative Dispute Resolution added.
- Mediation and Binding Arbitration added.

Timelines

- All “Days” are work days, not necessarily calendar days.
- Must file the grievance within **15 days** from the event that causes the grievance to be filed.
- Chief Administrator must hold a conference or hearing within **10 days**.
- Chief Administrator must issue a decision within **15 days** of the hearing/conference.

Local Association Action

- Train Grievance Chairs to handle Level 1 conferences with local superintendents.
- Schedule training for local members on the new grievance procedure.
- Schedule training for local administrators on the new grievance procedure.
- Meet with superintendents NOW to set ground rules for dealing with Level 1 conferences.

Public Employees Grievance Board

http://pegboard.state.wv.us/

Help?

- WVEA Help Center 1-866-568-WVEA (9832)
- WV Grievance Board 1-866-747-6743
- WVEA Website www.wvea.org
- WVEA Organizational Development Specialist