



**WEST VIRGINIA  
DEPARTMENT OF TRANSPORTATION**  
1900 Kanawha Boulevard East • Building Five • Room 109  
Charleston, West Virginia 25305-0440 • (304) 558-0444

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

May 27, 2022

**MEMORANDUM**

**TO:** ALL DOT Employees

**FROM:** Jimmy D. Wriston, P.E. *JW*  
Secretary of Transportation/  
Commissioner of Highways

**THRU:** Rita Pauley *RP*  
Assistant Commissioner

Alanna J. Keller, P.E. *ajk*  
Chief Transportation Engineer

**SUBJECT:** DOT 3.5 Grievances Policy

The Grievances Policy has been revised. The revisions are summarized in Section 7.0 Change Log. Please carefully review this information; all DOT employees are affected by the new policy.

A copy of the policy can be found at -  
<https://sites.google.com/wv.gov/dot/policies>

If you have any questions, please contact the Highway Hearing Examiners Office at [dohgrievances@wv.gov](mailto:dohgrievances@wv.gov).



# West Virginia Department of Transportation Policy: **GRIEVANCES**

*Issued by the Secretary of Transportation*

**Policy No: DOT 3.5**

**Issue Date: 07/01/2007**

**Revised: 05/27/2022**

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## **1.0 INTRODUCTION**

Included in this procedure are the West Virginia Department of Transportation (WVDOT) policies and processes for resolving grievances and a discussion of employees' 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 procedure is supplemental to West Virginia Code Chapter 6C, Article 2, "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 procedure, including the appendices and the referenced section of the State Code is recommended.

### **1.1 GRIEVANCE DEFINED**

- A. A grievance is a claim by an employee alleging a violation, misapplication or misinterpretation of the statutes, policies, rules, regulations, or written agreements applicable to the employee, including the following:
- B. Any violation, misapplication or misinterpretation regarding compensation, hours, terms and conditions of employment, employment status, or discrimination, unless discrimination is related to the actual responsibilities of the employee or agreed to in writing by the employee.
- C. Discrimination complaints based on Title VII of the Civil Rights Act, including sexual harassment, may also be filed with:
  - 1. West Virginia Human Rights Commission within 365 days of the date of the occurrence;
  - 2. U.S. Equal Employment Opportunity Division within 300 days of the date of occurrence;
  - 3. West Virginia Department of Transportation, Civil Rights Compliance Division. For the definition of discrimination and sexual harassment, see WVDOT Administrative Procedures 3.6, Discrimination Complaints.
- D. Any discriminatory or otherwise aggrieved application of policies or practices of the employer.
- E. Any specifically identified incident of harassment or favoritism.

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- F. Any action, policy, or practice constituting a substantial detriment to or interference with effective job performance or the health and safety of the employee.

### **1.2 GRIEVANCE PROCEDURE EXCLUSIONS**

- A. Any issue relating to public employees' insurance.
- B. Any matter relating to public employees' retirement.
- C. Any other matter in which authority to act is not assigned to the WVDOT.

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## **2.0 SCOPE**

This policy explains the grievance process that all WVDOT employees are to follow.

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## **3.0 DOT GRIEVANCE POLICY**

Employees and employers should strive 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.

### **3.1 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.
- 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 of the grievance.
- C. For purposes of grievance preparation, the grievant, the employee representative, or both, shall be granted a maximum of four hours per person per grievance off during work hours without loss of pay or use of annual or compensatory leave. The time off 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. An employee representing another employee is limited to four hours 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 grievances in a calendar year.

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

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preparation and representation activities to seriously affect the overall productivity of the employee.”

Activity code “007” will be used to account for time spent in grievance preparation, except for the Maintenance Work Force, which will use code “807.”

- D. 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.
- E. The grievant shall have access to the employer’s equipment (including copy machine) for the purpose of preparing grievance documents, subject to the WVDOT rules governing the use of equipment.
- F. All proceedings shall be at a convenient place to all parties. The location of the Level Two Mediation and Level Three hearing shall be set by the administrative law judge.
- G. An employee may proceed directly to Level Three with agreement of the employee and the chief administrator, or when the employee is:
  - 1. Discharged;
  - 2. Suspended without pay;
  - 3. Demoted or reclassified, resulting in a loss of compensation or benefits.
- H. Any expenses incurred relative to the grievance procedure at Levels One, Two, or Three (e.g., travel expenses, copying charges) shall be borne by the party incurring the expenses.
- I. 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 may be found in Section 4.2 of this. Policy.

### 3.2 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 Employee Grievance Board. These addresses are as follows:

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1. Chief Administrator  
West Virginia Department of Transportation  
West Virginia Division of Highways  
1900 Kanawha Boulevard, East  
Building 5, Room 129  
Charleston, WV 25305  
DOHGrievances@wv.gov
  2. West Virginia Public Employees Grievance Board  
1701 5<sup>th</sup> Avenue, Suite 2  
Charleston, West Virginia 25387  
[WVGB@wv.gov](mailto: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 is not working because of an accident, sickness, death in the immediate family, or other cause for which the grievant 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 be asserted by the employer at or before Level Two.
- D. The grievant prevails by default if a required response is not made by the employer within the required time limits (see Section 4.2, below), unless the employer 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 may file with the Grievance Board a written notice of intent to proceed directly to the next level, or to enforce the default. If the chief administrator objects to the default, he or she may 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 grievant is contrary to law or contrary to proper and available remedies.
- F. If the administrative law judge finds that the employer has a defense to the default, or that the remedy is contrary to law or not proper or available at the 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.

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### 4.0 WVDOT GRIEVANCE PROCESS

The following sections list the steps and specifies 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.

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### 4.1 DEFINITION OF CHIEF ADMINISTRATOR

Grievance filings at all levels of the grievance process must start with the chief administrator. "Chief Administrator" means, in the context of WV DOT, the Secretary, Commissioner or Agency Head or his or her designee. The designee has the authority to handle any aspect of the grievance procedure. Each agency's Commissioner or Agency Head is responsible to apply this guideline to his or her own organization structure.

### 4.2 THE THREE LEVELS OF THE GRIEVANCE PROCESS

#### A. Level One – Internal Grievance Evaluator

1. Employee grievant may file a written grievance on a West Virginia Public Employees Grievance Form (see Section 5.2) with the chief administrator and submit a copy to the West Virginia Public Grievance Board.

#### B. Form must be filed:

1. Within 15 working days (excluding Saturdays, Sundays, and official holidays) following the grievable event; or,
2. Within 15 working days of the event becoming known to the grievant; or,
3. Within 15 working days of the most recent occurrence of a continuing practice.

#### C. The written grievance must state the nature of the grievance and the relief requested. Information must be complete, including an employee's name, address, telephone number, email address and representative information when applicable.

#### D. On the grievance form, the grievant may request either a conference or a hearing.

#### E. Conferences must be held within 10 working days of receipt of the written grievance. Hearings shall be held within 15 working days of receipt of the written grievance.

#### F. Grievance evaluator must issue a written decision to the grievant or his or her representative within 15 working days of the conference or hearing.

#### G. Level Two – Alternative Dispute Resolution (ADR)

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1. Grievant may file a written request for ADR with the West Virginia Public Employees Grievance Board within 10 working days of receiving an adverse Level One written decision. A copy of the appeal must be filed with the chief administrator.
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 in preparation of Level Three within 15 working days of mediation.

### H. 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 chief administrator.
2. An administrative law judge will schedule a hearing or any other deadlines 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 chief administrator.
4. The decision of the administrative law judge is final upon the parties and is enforceable in the Intermediate Court of Appeals.
5. An appeal of a Level Three decision may be made by either party. It must be filed the Intermediate Court of Appeals for any final judgments, orders, or decisions of the grievance board entered after June 30, 2022, within 30 working days of receipt of the administrative law judge's decision. A separate motion to stay the decision may also be filed.

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### 5.0 RELEVANT MATERIALS AND DOCUMENTS

#### 5.1 TIME FRAME TABLE FOR GRIEVANCE PROCESS

- A. All “days” designated below are workdays, exclusive of Saturdays, Sundays, and official holidays.
  
- B. All decisions must be in writing
  
- C. Appeals should be requested in writing. No reasons need to be stated for an appeal.
  
- D. Time frames can be extended at any level if agreed to by all parties.
  
- E. Level Three decisions may be appealed to the Kanawha County circuit court prior to July 1, 2022, and to the Intermediate Court of Appeals thereafter.



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### 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 chief administrator with copy to Grievance Board	10 days to file appeal to Grievance Board and chief administrator for ADR	10 days to file appeal to Grievance Board and chief administrator
10 days to hold Conference; 15 days to hold Hearing	20 days to schedule ADR	Hearing held within "reasonable time"
15 days to issue Grievance Evaluator's written decision	If settlement or decision: 15 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)

#### 5.2 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 5<sup>th</sup> Avenue Suite #2 Charleston, West Virginia 25387.

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

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<b>FOR INTERNAL USE ONLY</b>
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:**

\_\_\_\_\_  
\_\_\_\_\_

<b>Level One</b> (Choose one)	<b>Level Two</b> (Choose one)	<b>Level Three</b> (Choose one)
<input type="checkbox"/> 1. Hearing	<input type="checkbox"/> 1. Mediation by ALJ	<input type="checkbox"/> 1. Hearing
<input type="checkbox"/> 2. Conference	<input type="checkbox"/> 2. Private Mediation (See instructions)	<input type="checkbox"/> 2. Submit on Level 1 Hearing Record
<input type="checkbox"/> 3. Default	<input type="checkbox"/> 3. Private Arbitration (See instructions)	
<input type="checkbox"/> 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  
[wvwb@wv.gov](mailto:wvwb@wv.gov)

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### **Please note the following:**

- This form is to be used for all levels of the grievance procedure.
- Grievance forms may not be filed by interdepartmental mail. See the Grievance Board's Procedural Rule §156-1-2.1.4.
- "Days" means working days. See W. Va. Code § 6C-2-2(c).
- The Docket Number will be assigned by the Grievance Board.
- An employee may proceed directly to Level Three only under circumstances listed in the W. Va. Code § 6C-2-4(a)(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. [Emphasis added]
  - If all parties agree to proceed directly to Level Three, a statement verifying this fact, signed by all parties, must be submitted with the Grievance Form.

### **Level One – W.Va. Code § 6C-2-4(a)**

- Grievances must be filed within 15 days of the grievable event.
- Send a copy to the Chief Administrator of your agency; and a copy to the Public Employees Grievance Board, 1701 5th Avenue, Suite 2, Charleston, West Virginia 25387.
- State employees, except for WVDOT employees, must also send a copy to the Director of the Division of Personnel (DOP), Building 3, Suite 500, State Capitol Complex, Charleston, West Virginia 25305. WVDOT employees are exempt from DOP.
- A hearing will be recorded; a conference will not be recorded.

### **Level Two – W.Va. Code § 6C-2-4(b)**

- Grievant may appeal a Level One decision within 10 days of receiving an adverse written decision.
- Send a copy to the Chief Administrator of your agency; and a copy to the Public Employees Grievance Board, 1701 5th Avenue, Suite 2, Charleston, West Virginia 25387.
- State employees, except for WVDOT employees, must also send a copy to the Director of the Division of Personnel (DOP), Building 3, Suite 500, State Capitol Complex, Charleston, West Virginia 25305. WVDOT employees are exempt from DOP.
- The grievant may choose mediation by a Board administrative law judge; private mediation; or private arbitration. Grievant must select one of the three (3) options.
- Mediation by a Board administrative law judge is free.
- If private mediation or private arbitration is selected, a Mediation Agreement Form must be filed with the Grievance Form.

### **Level Three – W. Va. Code § 6C-2-4(c)**

- Grievant may file a written appeal within 10 days of receiving a written report stating that the Level Two mediation was unsuccessful.
- Send a copy to the Chief Administrator of your agency; and a copy to the Public Employees Grievance Board, 1701 5th Avenue, Suite 2, Charleston, West Virginia 25387.
- State employees, except for WVDOT employees, must also send a copy to the Director of the Division of Personnel (DOP), Building 3, Suite 500, State Capitol Complex, Charleston, West Virginia 25305. WVDOT employees are exempt from DOP.

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### 6.0 RELEVANT DOCUMENTS & MATERIALS

6.1 West Virginia Public Employees' Grievance Form

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

[https://pegb.wv.gov/forms/Documents/Grievance\\_Form.pdf](https://pegb.wv.gov/forms/Documents/Grievance_Form.pdf)

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

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### 7.0 CHANGE LOG

October 26, 2020-

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

May 27, 2022-

This policy reflects the removal of WVDOT agencies from the Department of Administration's Division of Personnel (DOP).

Corrected address for DOP, made grammar and punctuation corrections.

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Approved by:



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



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Date