

# **WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD**

## **ANNUAL REPORT FISCAL YEAR 2017**



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DIRECTOR**

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On behalf of the West Virginia Public Employees Grievance Board and in accordance with *West Virginia Code* § 6C-3-3, I am pleased to submit the Grievance Board's Annual Report for Fiscal Year 2017.

The report provides the following data:

- The number of grievances against each employer;
- The types of grievances, level of resolution and costs;
- The number of grievances granted, denied or resolved by other means; and
- The caseload of each administrative law judge, the type of grievance, the number of grievances resolved and the number of decisions issued.

During Fiscal Year 2017, 2,289 new grievances were filed at either Level One or Level Three. Please note that post-filing consolidation results in fewer proceedings than the number of original grievances.

During Fiscal Year 2017, 235 appealable decisions were issued. The average number of days from date of maturity to date of issue was 39.42.

During Fiscal Year 2017, 44 Level 2 Mediations were closed as Successful and 47 were closed as Unsuccessful but were not appealed to Level 3. With the average total cost of a Level 3 hearing of \$4,421.49, these 91 mediations represent a cost avoidance (of a Level 3 hearing) of more than \$402,355.60.

The Board hopes you find this report informative and welcome your inquiries regarding any of the data it contains.

# TABLE OF CONTENTS

Number of Grievances Against Each Employer	
County Boards of Education .....	1
State Employers .....	2
Type of Grievances Filed .....	7
Level of Resolution.....	8
Outcomes of Grievances .....	9
Costs of Grievances.....	10
Administrative Law Judge Caseload .....	11
Contract Administrative Law Judge Caseload .....	12
Mediations .....	13

## NUMBER OF GRIEVANCES AGAINST EACH EMPLOYER

COUNTY BOARDS OF EDUCATION								
2015	2016	2017			2015	2016	2017	
2	5	4	Barbour		0	2	1	Mineral
8	4	20	Berkeley		43	21	10	Mingo
10	6	444	Boone		5	5	37	Monongalia
4	3	2	Braxton		4	2	1	Monroe
15	8	12	Brooke		55	2	0	Morgan
5	7	10	Cabell		7	6	2	Nicholas
196	9	2	Calhoun		4	4	18	Ohio
1	0	3	Clay		0	0	0	Pendleton
1	2	0	Doddridge		0	0	0	Pleasants
4	5	6	Fayette		0	0	0	Pocahontas
1	6	2	Gilmer		4	2	1	Preston
0	24	0	Grant		4	9	5	Putnam
3	1	2	Greenbrier		9	18	22	Raleigh
2	13	6	Hampshire		2	13	4	Randolph
12	71	4	Hancock		2	2	0	Ritchie
0	3	1	Hardy		1	2	2	Roane
6	10	7	Harrison		3	1	1	Summers
2	3	0	Jackson		3	2	4	Taylor
7	5	16	Jefferson		1	0	1	Tucker
66	53	44	Kanawha		0	0	0	Tyler
31	63	3	Lewis		4	3	6	Upshur
20	12	11	Lincoln		12	20	50	Wayne
23	17	12	Logan		1	0	0	Webster
4	0	8	Marion		17	2	0	Wetzel
3	4	6	Marshall		1	5	2	Wirt
17	18	23	Mason		25	28	59	Wood
4	5	4	McDowell		1	0	0	Wyoming
9	2	19	Mercer		<b>664</b>	<b>508</b>	<b>897</b>	<b>TOTAL</b>

## NUMBER OF GRIEVANCES AGAINST EACH EMPLOYER

STATE EMPLOYERS			
2015	2016	2017	
<b>13</b>	<b>8</b>	<b>51</b>	<b>Administration, Department of</b>
1	0	0	Aviation Division
2	0	0	Board of Risk and Insurance Management
3	2	1	Division of Personnel
4	4	48	General Services Division
0	2	2	Office of Technology
3	0	0	Public Defender Services
<b>1</b>	<b>24</b>	<b>0</b>	<b>Bureau of Senior Services</b>
<b>37</b>	<b>22</b>	<b>17</b>	<b>Commerce, Department of</b>
1	1	1	Division of Forestry
2	4	2	Division of Labor
15	12	8	Division of Natural Resources
1	0	0	Division of Tourism
0	1	1	Office of Economic Opportunity
3	0	2	Office of Miners' Health, Safety and Training
15	3	3	WorkForce West Virginia
0	1	0	Unspecified
<b>0</b>	<b>2</b>	<b>18</b>	<b>Board of Education</b>
<b>9</b>	<b>7</b>	<b>18</b>	<b>Education, Department</b>
<b>12</b>	<b>10</b>	<b>16</b>	<b>Education and the Arts, Department of</b>
1	0	0	Division of Culture and History
11	10	15	Division of Rehabilitation Services
0	0	1	Public Broadcasting
<b>8</b>	<b>7</b>	<b>8</b>	<b>Environmental Protection, Department of</b>
1	1	1	Division of Air Quality
0	1	1	Division of Land Restoration
2	1	4	Division of Mining and Reclamation
1	3	2	Division of Water and Waste Management
0	1	0	Oil and Gas Conservation Commission
4	0	0	Not specified

2015	2016	2017	
<b>353</b>	<b>473</b>	<b>476</b>	<b>Health and Human Resources, Department of</b>
<b>0</b>	<b>0</b>	<b>1</b>	<b>Administration</b>
<b>206</b>	<b>281</b>	<b>351</b>	<b>Bureau for Behavioral Health &amp; Health Facilities</b>
7	0	2	Central Office
4	4	7	Hopemont Hospital
13	49	10	Jackie Withrow Hospital (Pinecrest Hospital)
0	1	0	John Manchin Sr. Health Care Center
44	44	21	Lakin Hospital
25	19	20	Mildred Mitchell-Bateman Hospital
10	18	71	Welch Community Hospital
103	146	220	William R. Sharpe, Jr. Hospital
<b>11</b>	<b>11</b>	<b>13</b>	<b>Bureau for Child Support Enforcement,</b>
<b>98</b>	<b>151</b>	<b>83</b>	<b>Bureau for Children and Families</b>
<b>3</b>	<b>0</b>	<b>0</b>	<b>Bureau for Medical Services</b>
<b>13</b>	<b>15</b>	<b>10</b>	<b>Bureau for Public Health</b>
<b>5</b>	<b>7</b>	<b>7</b>	<b>County Health Departments</b>
<b>2</b>	<b>2</b>	<b>1</b>	<b>Human Resource Management</b>
<b>1</b>	<b>2</b>	<b>4</b>	<b>Inspector General</b>
<b>0</b>	<b>1</b>	<b>1</b>	<b>Management Information Services</b>
<b>6</b>	<b>3</b>	<b>5</b>	<b>Office of Secretary</b>
<b>107</b>	<b>211</b>	<b>157</b>	<b>Higher Education Policy Commission</b>
<b>95</b>	<b>200</b>	<b>145</b>	<b>Baccalaureate and Graduate Institutions</b>
4	1	3	Bluefield State College
6	6	3	Concord University
3	0	8	Fairmont State University
0	1	1	Glenville State College
8	6	10	Marshall University
2	6	3	Potomac State College of West Virginia University
1	1	5	Shepherd University
7	3	3	West Liberty University
2	0	0	West Virginia School of Osteopathic Medicine
2	0	5	West Virginia State University
59	168	104	West Virginia University
1	8	0	West Virginia University Institute of Technology
<b>12</b>	<b>10</b>	<b>11</b>	<b>Community and Technical Colleges</b>
0	1	1	BlueRidge Community & Technical College
0	1	3	BridgeValley Community & Technical College
0	0	1	Eastern Community & Technical College
3	3	0	Mountwest Community & Technical College
4	2	3	New River Community & Technical College
1	0	0	Pierpont Community & Technical College

2015	2016	2017	
2	0	1	Southern West Virginia Community & Technical College
2	3	2	West Virginia University at Parkersburg
0	0	1	<b>West Virginia Network</b>
0	1	0	<b>Not specified</b>
1	1	0	<b>Housing Development Fund</b>
116	160	318	<b>Military Affairs and Public Safety, Department of</b>
0	1	0	<b>Adjutant General</b>
65	97	110	<b>Division of Corrections</b>
3	4	4	Anthony Correctional Center
6	1	3	Beckley Correctional Center
3	1	5	Central Office
0	1	3	Charleston Correctional Center
2	0	0	Charleston Work Release Center
0	2	3	Denmar Correctional Center
0	4	0	Huntington Work Release
9	39	2	Huttonsville Correctional Center
2	1	1	Lakin Correctional Center
2	5	10	Martinsburg Correctional Center
21	31	14	Mount Olive Correctional Complex
4	4	21	Northern Correctional Facility
0	1	3	Ohio County Correctional Complex
0	0	4	Parkersburg Correctional Center
5	1	24	Parole Services
2	0	1	Pruntytown Correctional Center
2	0	7	Saint Marys Correctional Center
4	2	4	Salem Correctional Center
0	0	1	WV Corrections Academy
0	1	1	<b>Division of Homeland Security and Emergency Management</b>
4	6	1	<b>Division of Justice and Community Services</b>
16	23	27	<b>Division of Juvenile Services</b>
0	1	2	<b>Central Office</b>
14	18	23	<b>Facilities</b>
0	2	6	Donald R. Kuhn Juvenile Center
3	1	2	Gene Spadaro Juvenile Center
1	0	0	J. M. Chick Buckbee Juvenile Center
0	4	0	Kenneth Honey Rubenstein Juvenile Center
6	2	6	Lorrie Yeager Juvenile Center
0	2	3	Robert L. Shell Juvenile Center
1	0	2	Sam Perdue Juvenile Center
3	2	4	Tiger Morton Juvenile Center
0	5	0	Vicki Douglas Juvenile Center

2015	2016	2017	
<b>2</b>	<b>4</b>	<b>2</b>	<b>Reporting Centers</b>
0	1	0	Jefferson County Youth Reporting Center
1	0	1	Kanawha County Youth Reporting Center
0	2	0	Tri County Youth Reporting Center
1	1	1	Wood County Youth Reporting Center
<b>0</b>	<b>0</b>	<b>1</b>	<b>Parole Board</b>
<b>30</b>	<b>30</b>	<b>178</b>	<b>Regional Jail and Correctional Facilities Authority</b>
1	0	0	Central Office
4	3	13	Central Regional Jail
1	0	5	Eastern Regional Jail
6	3	4	North Central Regional Jail
1	2	2	Northern Regional Jail
5	6	17	Potomac Highlands Regional Jail
2	1	5	South Central Regional Jail
5	1	73	Southern Regional Jail
3	5	26	Southwestern Regional Jail
0	3	7	Tygart Valley Regional Jail
2	6	26	Western Regional Jail
<b>0</b>	<b>2</b>	<b>0</b>	<b>State Fire Commission</b>
<b>1</b>	<b>0</b>	<b>0</b>	<b>State Police</b>
<b>0</b>	<b>1</b>	<b>4</b>	<b>Miscellaneous</b>
0	0	1	AFL-CIO Appalachian Council Head Start
0	0	1	Berkeley County Public Service Water District
0	0	1	Lewis County Senior Citizens Center, Inc.
0	0	1	State Auditor's Office
<b>15</b>	<b>3</b>	<b>10</b>	<b>Miscellaneous Boards and Commissions</b>
8	0	0	Board of Barbers and Cosmetologists
0	0	1	Board of Social Work
7	1	2	Public Service Commission
0	2	7	Water Development Authority
<b>18</b>	<b>18</b>	<b>6</b>	<b>Revenue, Department of</b>
3	3	0	Alcohol Beverage Control Administration
5	6	2	Insurance Commission
0	0	1	Lottery Commission
10	9	3	Tax Department



<b>2015</b>	<b>2016</b>	<b>2017</b>	
<b>261</b>	<b>293</b>	<b>280</b>	<b>Transportation, Department of</b>
202	257	260	Division of Highways
33	33	16	Division of Motor Vehicles
0	1	0	Division of Public Transit
26	1	3	Office of Administrative Hearings
0	1	1	Parkways Authority
<b>33</b>	<b>14</b>	<b>13</b>	<b>Veterans Assistance, Department of</b>
<b>976</b>	<b>1254</b>	<b>1392</b>	<b>TOTAL</b>

TYPES OF GRIEVANCES FILED IN FY17, BY GROUP*			
2015	2016	2017	
663	855	1,274	Classification and Compensation
10	9	15	Level One - Default
346	232	298	Disciplinary
121	105	117	Discrimination
75	78	80	Harassment
258	360	327	Non-Disciplinary Employment Actions **
50	54	68	Reprisal
189	206	198	Selection
284	325	367	Violations of Federal, State or Agency Statutes, Rules or Policies
46	37	484	Other

TYPES OF GRIEVANCES FILED IN FY17, BY GROUP			
COUNTY BOARDS OF EDUCATION	HIGHER EDUCATION POLICY COMMISSION	STATE EMPLOYEES	
536	83	655	Classification and Compensation
4	0	11	Level One - Default
46	32	220	Disciplinary
21	21	75	Discrimination
22	22	36	Harassment
137	15	175	Non-Disciplinary Employment Actions **
7	12	49	Reprisal
120	8	70	Selection
101	20	246	Violations of Federal, State or Agency Statutes, Rules or Policies
446	3	35	Other

\* Grievances frequently involve more than one type of issue.

\*\* This includes transfers, reductions in force, bumping, non-renewal of contracts, counseling, and probationary dismissal for unsatisfactory performance.

LEVEL OF RESOLUTION				
2015	2016	2017	Percent of Level Total for FY17	Level
546	586	572	55%	Level One – Chief Administrator
2	2	5	0%	Level One - Default
146	136	137	13%	Level Two – Alternative Dispute Resolution
323	312	327	31%	Level Three – Hearing

LEVEL OF RESOLUTION IN FY17, BY GROUP			
County Boards of Education	Higher Education Policy Commission	State Employees	
183 57%	61 64%	327 53%	Level One – Chief Administrator Percent of Group Total
2 1%	0 0%	3 0%	Level One - Default Percent of Group Total
31 10%	15 16%	91 15%	Level Two – Alternative Dispute Resolution Percent of Group Total
105 33%	20 21%	202 32%	Level Three – Hearing Percent of Group Total

## OUTCOMES OF GRIEVANCES IN FY17

TYPE	Classification and Compensation	Default	Disciplinary	Discrimination	Harassment	Non-Disciplinary Employment Actions	Reprisal	Selection	Violations of Federal, State or Agency Statutes, Rules or Policies	Other	TOTAL	Percentage
Denied	68	1	57	21	11	38	8	54	23	6	287	16%
Failure to Pursue	15	0	32	1	2	14	1	8	12	0	85	5%
Failure to State a Claim	0	0	1	0	0	0	0	0	0	0	1	0%
Granted	27	0	25	0	0	12	0	7	3	0	74	4%
Granted/Denied	7	0	8	3	1	5	2	3	2	0	31	2%
Lack of Jurisdiction	3	0	1	0	0	0	0	0	0	5	9	1%
Moot	8	0	11	8	5	13	3	4	21	0	73	4%
No Grievable Event	0	0	0	0	0	0	0	0	0	0	0	0%
No Standing	17	0	0	1	0	0	0	1	1	20	40	2%
Other	0	0	1	0	0	0	0	0	0	2	3	0%
Remedy Wholly Unavailable	2	0	1	1	2	1	0	0	1	4	12	1%
Res Judicata	2	0	0	1	1	0	1	0	0	3	8	0%
Settled	278	2	48	14	18	37	10	20	33	10	470	26%
Unsuccessful	56	0	6	1	2	7	0	8	8	2	90	5%
Untimely	21	0	2	1	0	0	0	1	0	12	37	2%
Withdrawn	308	2	44	22	21	50	11	40	44	12	554	31%
<b>Total</b>	<b>812</b>	<b>5</b>	<b>237</b>	<b>74</b>	<b>63</b>	<b>177</b>	<b>36</b>	<b>146</b>	<b>148</b>	<b>76</b>	<b>1774</b>	<b>100%</b>

<b>COSTS OF GRIEVANCES</b>				
<b>Cost Category</b>	<b>Level One*</b>	<b>Level One - Default</b>	<b>Level Two</b>	<b>Level Three</b>
Average Estimated Cost of Employee Time to Handle the Grievance	217.86	37.50	249.45	605.38
Actual Cost of Legal Time paid in the Resolution of the Grievance	142,979.53	11,839.00	95,170.52	702,205.83
Actual Cost of Any Damages Paid in the Resolution of the Grievance	84,678.37	0.00	2,443.21	167,887.42
Miscellaneous Costs Incurred by the Employer	103,935.06	165.00	12,611.81	73,901.44
Average Total Cost of Handling the Grievance	669.66	3,038.50	1,038.50	4,421.49

\* The numbers do not include grievances that were filed by employees of entities over which the Grievance Board has no jurisdiction. They include the AFL-CIO Appalachian Council Head Start, the Berkeley County Public Service Water District, the Lewis County Senior Citizens Center, Inc., and the West Virginia State Auditor's Office.

## ADMINISTRATIVE LAW JUDGE CASELOAD

	MEDIATIONS						HEARINGS					
	LRB	BTC	BLG	CHL	WBM	RLR	LRB	BTC	BLG	CHL	WBM	RLR
Assigned (as of 6-30-2017)	8	13	15	14	11	11	20	30	28	29	25	32
Number Closed	25	22	7	19	26	10	45	68	51	44	46	59
Mediations Settled	8	4	3	3	5	4						
Decisions Issued							24	44	37	32	35	43
Classification/ Compensation	14	11	5	3	13	3	14	18	16	7	10	21
Default	0	0	0	0	0	0	0	3	1	0	1	0
Disciplinary	5	2	0	3	3	2	8	28	12	15	23	19
Discrimination	3	1	0	2	1	0	5	2	2	5	0	2
Harassment	2	0	0	2	1	0	4	3	3	0	1	3
Non-disciplinary employment actions	3	2	1	5	4	2	6	6	9	6	2	5
Reprisal	2	0	0	0	0	0	3	1	0	5	0	3
Selection	2	2	1	3	6	1	8	7	10	8	8	12
Violations of Federal, State or Agency Statutes, Rules or Policies	5	4	1	6	1	1	0	5	3	1	1	2
Other	1	5	0	0	0	4	3	16	4	8	6	5

## CONTRACT ADMINISTRATIVE LAW JUDGE CASELOAD

	MEDIATIONS				HEARINGS			
	LGB	SLB	HDS	MJS	LGB	SLB	HDS	MJS
Assigned (as of 6-30-2017)	0	0	15	0	2	0	0	6
Number Closed	0	2	25	1	14	11	0	1
Mediations Settled	0	1	15	1				
Decisions Issued					10	9	0	1
Classification/Compensation	0	1	8	1	4	6	0	0
Default	0	0	0	0	0	0	0	0
Disciplinary	0	0	6	0	8	2	0	1
Discrimination	0	0	2	0	0	0	0	0
Harassment	0	0	2	0	0	0	0	0
Non-disciplinary employment actions	0	1	4	0	1	0	0	0
Reprisal	0	1	2	0	0	0	0	0
Selection	0	0	3	0	1	3	0	0
Violations of Federal, State or Agency Statutes, Rules or Policies	0	1	3	0	4	0	0	0
Other	0	0	0	0	1	0	0	0

MEDIATIONS IN FY17				
Successful versus Unsuccessful, by Category of Grievance				
Successful	Unsuccessful	Percentage Successful	Type	Category
10	24	42%	2	Disciplinary
3	8	38%	5	Reprisal
4	15	27%	4	Harassment
7	29	24%	7	Violations of Federal, State or Agency Statutes, Rules or Policies
4	17	24%	3	Discrimination
19	104	18%	1	Classification/ Compensation
5	30	17%	9	Non-disciplinary employment actions
4	57	7%	6	Selection
1	20	5%	8	Other
Successful versus Unsuccessful, by Administrative Law Judge				
3	8	38%		BLG
8	39	21%		LRB
4	21	19%		RLR
4	33	12%		BTC
3	29	10%		CHL
5	55	9%		WBM
Successful versus Unsuccessful, by Contract Administrative Law Judge				
1	2	50%		MJS
15	40	38%		HDS
1	3	33%		SLB
0	1	0%		LGB