WEST VIRGINIA CODE: §6c-2-2

§6C-2-2. Definitions.

For the purpose of this article and article three of this chapter:

(a) "Board" means the West Virginia Public Employees Grievance Board created in article three of this chapter.

(b) "Chief administrator" means, in the appropriate context, the commissioner, chancellor, director, president, secretary or head of any state department, board, commission, agency, state institution of higher education, commission or council, the state superintendent, the county superintendent, the executive director of a regional educational service agency or the director of a multicounty vocational center who is vested with the authority to resolve a grievance. A "chief administrator" includes a designee, with the authority delegated by the chief administrator, appointed to handle any aspect of the grievance procedure as established by this article.

(c) "Days" means working days exclusive of Saturday, Sunday, official holidays, and any day in which the employee's workplace is legally closed under the authority of the chief administrator due to weather or other causes provided for by statute, rule, policy or practice.

(d) "Discrimination" means any differences in the treatment of similarly situated employees unless the differences are related to the actual job responsibilities of the employees or are agreed to in writing by the employees.

(e)(1) "Employee" means any person hired for permanent employment by an employer for a probationary, full- or part-time position.

(2) 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.

(3) "Employee" does not mean a member of the West Virginia State Police employed pursuant to §15-2-1 *et seq*. of this code but does include civilian employees hired by the superintendent of the State Police. "Employee" does not mean an employee of a Constitutional officer unless he or she is covered under the civil service system, an employee of the Legislature, or a patient or inmate employed by a state institution.

(f) "Employee organization" means an employee advocacy organization with employee members that has filed with the board the name, address, chief officer, and membership criteria of the organization.

(g) "Employer" means a state agency, department, board, commission, college, university,

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institution, State Board of Education, Department of Education, county board of education, regional educational service agency or multicounty vocational center, or agent thereof, using the services of an employee as defined in this section.

(h) "Favoritism" means unfair treatment of an employee as demonstrated by preferential, exceptional, or advantageous treatment of a similarly situated employee unless the treatment is related to the actual job responsibilities of the employee or is agreed to in writing by the employee.

(i)(1) "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:

(i) Any violation, misapplication, or misinterpretation regarding compensation, hours, terms and conditions of employment, employment status, or discrimination;

(ii) Any discriminatory or otherwise aggrieved application of unwritten policies or practices of his or her employer;

(iii) Any specifically identified incident of harassment;

(iv) Any specifically identified incident of favoritism; or

(v) 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.

(2) "Grievance" does not mean:

(A) 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;

(B) Any matter relating to the protected classes set forth in §5-11-1 *et seq*. of this code.

(j) "Grievance proceeding", "proceeding" or the plural means a conference, level one hearing, mediation, private mediation, private arbitration or level three hearing, or any combination, unless the context clearly indicates otherwise.

(k) "Grievant" means an employee or group of similarly situated employees filing a grievance.

(l) "Harassment" means repeated or continual disturbance, irritation, or annoyance of an employee that is contrary to the behavior expected by law, policy, and profession.

(m) "Party" or the plural, means the grievant, intervenor, employer, and the Director of the Division of Personnel or his or her designee, for most state government employee

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grievances. The Division of Personnel shall not be a party to grievances involving higher education or Department of Transportation employees.

(n) "Representative" means any employee organization, fellow employee, attorney, or other person designated by the grievant or intervenor as his or her representative, and may not include a supervisor who evaluates the grievant.

(o) "Reprisal" means the retaliation of an employer toward a grievant, witness, representative, or any other participant in the grievance procedure either for an alleged injury itself or any lawful attempt to redress it.

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