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SENATE CHAMBERS

WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 1992



ENROLLED

Com. Sub. for

HOUSE BILL No. 4602

(By Delegates *S. Cook and Statton*)



Passed *March 5,* 1992

In Effect *Ninety Days from* Passage

ENROLLED
COMMITTEE SUBSTITUTE
FOR
H. B. 4602
(By DELEGATES S. COOK AND STATON)

[Passed March 5, 1992; in effect ninety days from passage.]

AN ACT to amend and reenact sections one, two, three, four, six and eight, article twenty-nine, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article twenty-nine by adding thereto two new sections, designated sections ten and eleven, relating to grievance procedures for education employees; authorizing filing of grievance on behalf of others similarly situated; redefining employee and chief administrator; requiring assertion of untimeliness be made prior to level two; allowing grievant to prevail by default upon untimely response; authorizing appeal of remedy received by default; allowing grievance to be brought at higher level if evaluator at that level consents thereto; allowing presence of employee and others at certain meetings; affording protections to such employee; prohibiting certain communications between grievance evaluator and management representative; providing for appeal by adversely affected nongrievant; limiting application of doctrine of laches; amending certain deadlines; authorizing subpoena of witnesses and documents at levels two and three; allowing grievant to waive appeal to level three; requiring governing board to set forth reasons upon its waiver of level three hearing; making

information and decisions of level four proceedings available at reasonable cost; requiring institution to pay for transcripts; setting forth provisions regarding self-incrimination, burden of proof and burden of going forward; authorizing court to set costs and reasonable attorneys fees to employees prevailing upon appeal to circuit or supreme court; requiring mediation attempts and report of same; requiring compilation and dissemination of level four data to governing boards; and updating references to higher education governing boards.

Be it enacted by the Legislature of West Virginia:

That sections one, two, three, four, six and eight, article twenty-nine, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said article twenty-nine be further amended by adding thereto two new sections, designated sections ten and eleven, all to read as follows:

ARTICLE 29. GRIEVANCE PROCEDURE.

§18-29-1. Legislative purpose and intent.

1 The purpose of this article is to provide a procedure
2 for employees of the governing boards of higher
3 education, state board of education, county boards of
4 education, regional educational service agencies and
5 multi-county vocational centers and their employer or
6 agents of the employer to reach solutions to problems
7 which arise between them within the scope of their
8 respective employment relationships to the end that
9 good morale may be maintained, effective job perfor-
10 mance may be enhanced and the citizens of the commun-
11 ity may be better served. This procedure is intended to
12 provide a simple, expeditious and fair process for
13 resolving problems at the lowest possible administrative
14 level and shall be construed to effectuate this purpose.
15 Nothing herein shall prohibit the informal disposition of
16 grievances by stipulation or settlement agreed to in
17 writing by the parties, nor the exercise of any hearing
18 right provided in article two, chapter eighteen-a of this
19 code or any other section of chapter eighteen or
20 eighteen-a of this code: *Provided*, That employees of the

21 governing boards of higher education or of state
22 institutions of higher education shall have the option of
23 filing grievances in accordance with the provisions of
24 this article or in accordance with the provisions of
25 policies, rules of the governing boards of higher
26 education regarding such employees. Any board deci-
27 sion pursuant to such sections may be appealed in
28 accordance with the provisions of this article unless
29 otherwise provided in such section.

§18-29-2. Definitions.

1 For the purpose of this article:

2 (a) "Grievance" means any claim by one or more
3 affected employees of the governing boards of higher
4 education, state board of education, county boards of
5 education, regional educational service agencies and
6 multi-county vocational centers alleging a violation, a
7 misapplication or a misinterpretation of the statutes,
8 policies, rules, regulations or written agreements under
9 which such employees work, including any violation,
10 misapplication or misinterpretation regarding compen-
11 sation, hours, terms and conditions of employment,
12 employment status or discrimination; any discrimina-
13 tory or otherwise aggrieved application of unwritten
14 policies or practices of the board; any specifically
15 identified incident of harassment or favoritism; or any
16 action, policy or practice constituting a substantial
17 detriment to or interference with effective classroom
18 instruction, job performance or the health and safety of
19 students or employees.

20 A grievance may be filed by one or more employees
21 on behalf of a class of similarly situated employees:
22 *Provided*, That any similarly situated employee shall
23 indicate in writing of his or her intent to join the class
24 of similarly situated employees. Only one employee
25 filing a grievance on behalf of similarly situated
26 employees shall be required to participate in the level
27 one hearing required in section four of this article.

28 Any pension matter or other issue relating to the state
29 teachers retirement system in accordance with article
30 seven-a of this chapter or other retirement system

31 administered outside the jurisdiction of the applicable
32 governing board, any matter relating to public em-
33 ployees insurance in accordance with article sixteen,
34 chapter five of this code, or any other matter in which
35 authority to act is not vested with the employer shall not
36 be the subject of any grievance filed in accordance with
37 the provisions of this article.

38 (b) "Days" means days of the employee's employment
39 term or prior to or subsequent to such employment term
40 exclusive of Saturday, Sunday, official holidays or school
41 closings in accordance with section two, article five,
42 chapter eighteen-a of this code.

43 (c) "Employee" means any person hired as a tempor-
44 ary, probationary or permanent employee by an insti-
45 tution either full or part time. A substitute is considered
46 an employee only on matters related to days worked for
47 an institution or when there is a violation, misapplica-
48 tion or misinterpretation of a statute, policy, rule,
49 regulation or written agreement relating to such
50 substitute.

51 (d) "Grievant" means any named employee or group
52 of named employees filing a grievance as defined in
53 subsection (a) of this section.

54 (e) "Institution" means any state institution of higher
55 education, the governing boards of higher education,
56 any institution whose employees are hired by the state
57 board of education including the department of educa-
58 tion, and any public school, regional educational service
59 agency or multi-county vocational center.

60 (f) "Employer" means that institution contracting the
61 services of the employee.

62 (g) "Immediate supervisor" means that person next in
63 rank above the grievant possessing a degree of adminis-
64 trative authority and designated as such in the em-
65 ployee's contract, if any.

66 (h) "Chief administrator" means, as may be applica-
67 ble, the president of a state institution of higher
68 education, the chancellor of a governing board of higher
69 education only as to those employees employed solely by

70 the chancellor and governing board and not assigned to
71 a state institution of higher education, the senior
72 administrator as to those employees hired pursuant to
73 section two, article four, chapter eighteen-b of this code,
74 the state superintendent of schools as to employees hired
75 by the state board of education, the county superintend-
76 ent, the executive director of a regional educational
77 service agency or the director of a multi-county
78 vocational center.

79 (i) "Governing board" means the administrative board
80 of any state or county educational institution, including
81 institutions whose employees are hired by the state
82 board of education, and refers, as is applicable, to the
83 governing boards of higher education, state board of
84 education, county boards of education, the school board
85 members of any board of directors of a regional
86 educational service agency or the school board members
87 of any administrative council of a multi-county voca-
88 tional center.

89 (j) "Grievance evaluator" means that individual or
90 governing board authorized to render a decision on a
91 grievance.

92 (k) "Board" means the education employees grievance
93 board.

94 (l) "Hearing examiner" means the individual or
95 individuals employed by the board in accordance with
96 section five of this article.

97 (m) "Discrimination" means any differences in the
98 treatment of employees unless such differences are
99 related to the actual job responsibilities of the employees
100 or agreed to in writing by the employees.

101 (n) "Harassment" means repeated or continual distur-
102 bance, irritation or annoyance of an employee which
103 would be contrary to the demeanor expected by law,
104 policy and profession.

105 (o) "Favoritism" means unfair treatment of an
106 employee as demonstrated by preferential, exceptional
107 or advantageous treatment of another or other
108 employees.

109 (p) "Reprisal" means the retaliation of an employer or
110 agent toward a grievant or any other participant in the
111 grievance procedure either for an alleged injury itself
112 or any lawful attempt to redress it.

113 (q) "Employee organization" means any employee
114 advocacy organization whose membership includes
115 employees as defined in this section which has filed with
116 the board the name, address, chief officer and member-
117 ship criteria of the organization.

118 (r) "Representative" means any employee organiza-
119 tion, fellow employee, legal counsel or other person or
120 persons designated by the grievant as the grievant's
121 representative.

§18-29-3. Grievance procedure generally.

1 (a) A grievance must be filed within the times
2 specified in section four of this article and shall be
3 processed as rapidly as possible. The number of days
4 indicated at each level specified in section four of this
5 article shall be considered as the maximum number of
6 days allowed and, if a decision is not rendered at any
7 level within the prescribed time limits, the grievant may
8 appeal to the next level: *Provided*, That the specified
9 time limits may be extended by mutual written agree-
10 ment and shall be extended whenever a grievant is not
11 working because of such circumstances as provided for
12 in section ten, article four, chapter eighteen-a of this
13 code. Any assertion by the employer that the filing of
14 the grievance at level one was untimely must be asserted
15 by the employer on behalf of the employer at or before
16 the level two hearing. If a grievance evaluator required
17 to respond to a grievance at any level fails to make a
18 required response in the time limits required in this
19 article, unless prevented from doing so directly as a
20 result of sickness or illness, the grievant shall prevail
21 by default. Within five days of such default, the
22 employer may request a hearing before a level four
23 hearing examiner for the purpose of showing that the
24 remedy received by the prevailing grievant is contrary
25 to law or clearly wrong. In making a determination
26 regarding the remedy, the hearing examiner shall

27 presume the employee prevailed on the merits of the
28 grievance and shall determine whether the remedy is
29 contrary to law or clearly wrong in light of that
30 presumption. If the examiner finds that the remedy is
31 contrary to law, or clearly wrong, the examiner may
32 modify the remedy to be granted so as to comply with
33 the law and to make the grievant whole.

34 (b) If the employer or agent intends to assert the
35 applicability of any statute, policy, rule, regulation or
36 written agreement or submits any written response to
37 the filed grievance at any level, a copy thereof shall be
38 forwarded to the grievant and any representative of the
39 grievant so named in the filed grievance. Anything so
40 submitted and the grievant's response thereto, if any,
41 shall become part of the record. Failure to assert such
42 statute, policy, rule, regulation or written agreement at
43 any level shall not prevent the subsequent submission
44 thereof in accordance with the provisions of this
45 subsection.

46 (c) The grievant may file the grievance at the level
47 vested with the authority to grant the requested relief
48 if the grievance evaluator at that level agrees in writing
49 thereto. In the event a grievance is filed at a higher
50 level, the employer shall provide copies to each lower
51 administrative level.

52 (d) An employee may withdraw a grievance at any
53 time by notice, in writing, to the level wherein the
54 grievance is then current. Such grievance may not be
55 reinstated by the grievant unless such reinstatement is
56 granted by the grievance evaluator at the level where
57 the grievance was withdrawn. If more than one em-
58 ployee is named as grievant in a particular grievance,
59 the withdrawal of one employee shall not prejudice the
60 rights of any other employee named in the grievance.
61 In the event a grievance is withdrawn or an employee
62 withdraws from a grievance, such employer shall notify
63 in writing each lower administrative level.

64 (e) Grievances may be consolidated at any level by
65 agreement of all parties.

66 (f) An employee may have the assistance of one or

67 more fellow employees, an employee organization
68 representative or representatives, legal counsel or any
69 other person in the preparation and presentation of the
70 grievance. At the request of the grievant, such person
71 or persons may be present at any step of the procedure,
72 as well as at any investigative meeting or other meeting
73 which is held with the employee for the purpose of
74 discussing the possibility of disciplinary action. When a
75 fellow employee is assisting a grievant, the employee
76 shall do so without loss of pay and shall have protection
77 from reprisal as that term is defined in section two of
78 this article.

79 (g) If a grievance is filed which cannot be resolved
80 within the time limits set forth in section four of this
81 article prior to the end of the employment term, the time
82 limit set forth in said section shall be reduced as agreed
83 to in writing by both parties so that the grievance
84 procedure may be concluded within ten days following
85 the end of the employment term or an otherwise
86 reasonable time.

87 (h) No reprisals of any kind shall be taken by any
88 employer or agent of the employer against any inter-
89 ested party, or any other participant in the grievance
90 procedure by reason of such participation. A reprisal
91 constitutes a grievance, and any person held to be
92 responsible for reprisal action shall be subject to
93 disciplinary action for insubordination.

94 (i) Except for the informal attempt to resolve the
95 grievance as provided for in subsection (a), section four
96 of this article, decisions rendered at all levels of the
97 grievance procedure shall be dated, shall be in writing
98 setting forth the decision or decisions and the reasons
99 therefor, and shall be transmitted within the time
100 prescribed to the grievant and any representative
101 named in the grievance. If the grievant is denied the
102 relief sought, the decision shall include the name of the
103 individual at the next level to whom appeal may be
104 made.

105 (j) Once a grievance has been filed, supportive or
106 corroborative evidence may be presented at any confer-

107 ence or hearing conducted pursuant to the provisions of
108 this article. Whether evidence substantially alters the
109 original grievance and renders it a different grievance
110 is within the discretion of the grievance evaluator at the
111 level wherein the new evidence is presented. If the
112 grievance evaluator rules that the evidence renders it a
113 different grievance, the party offering the evidence may
114 withdraw same; the parties may consent to such
115 evidence, or the grievance evaluator may decide to hear
116 the evidence or rule that the grievant must file a new
117 grievance. The time limitations for filing the new
118 grievance shall be measured from the date of such
119 ruling.

120 (k) Any change in the relief sought by the grievant
121 shall be consented to by all parties or may be granted
122 at level four within the discretion of the hearing
123 examiner.

124 (l) Forms for filing grievances, giving notice, taking
125 appeals, making reports and recommendations, and all
126 other necessary documents shall be made available by
127 the immediate supervisor to any employee upon request.
128 Such forms shall include information as prescribed by
129 the board. The grievant shall have access to the
130 institution's equipment for purposes of preparing
131 grievance documents subject to the reasonable rules of
132 the employer governing the use of such equipment.

133 (m) Notwithstanding the provisions of section three,
134 article nine-a, chapter six of this code, or any other
135 provision relating to open proceedings, all conferences
136 and hearings pursuant to this article shall be conducted
137 in private except that, upon the grievant's request,
138 conferences and hearings at levels two and three shall
139 be public. Within the discretion of the hearing exa-
140 miner, conferences and hearings may be public at level
141 four.

142 (n) No person or governing board to which appeal has
143 been made shall confer or correspond with a grievance
144 evaluator at a previous level or a management represen-
145 tative who recommended or approved the grieved action
146 regarding the merits of the grievance unless all parties

147 to the grievance are present.

148 (o) Grievances may be processed at any reasonable
149 time, but attempts shall be made to process the
150 grievance on work time in a manner which does not
151 interfere with the normal operation of the institution.
152 Grievances processed on work time shall not result in
153 any reduction in salary, wages, rate of pay or other
154 benefits of the employee and shall be counted as time
155 worked.

156 Should any employer or the employer's agent cause a
157 conference or hearing to be postponed without adequate
158 notice to employees who are scheduled to appear during
159 their normal work day, such employees will not suffer
160 any loss in pay for work time lost.

161 (p) Any grievance evaluator may be excused from
162 participation in the grievance process for reasonable
163 cause, including, but not limited to, conflict of interest
164 or incapacitation, and in such case the grievance
165 evaluator at the next higher level shall designate an
166 alternate grievance evaluator if such is deemed reason-
167 able and necessary.

168 (q) No less than one year following resolution of a
169 grievance at any level, the grievant may by request in
170 writing have removed any record of the grievance from
171 any file kept by the employer.

172 (r) All grievance forms and reports shall be kept in
173 a file separate from the personnel file of the employee
174 and shall not become a part of such personnel file, but
175 shall remain confidential except by mutual written
176 agreement of the parties.

177 (s) The number of grievances filed against an em-
178 ployer or agent or by an employee shall not, per se, be
179 an indication of such employer's or agent's or such
180 employee's job performance.

181 (t) Any chief administrator or governing board of an
182 institution in which a grievance was filed may appeal
183 such decision on the grounds that the decision (1) was
184 contrary to law or lawfully adopted rule, regulation or
185 written policy of the chief administrator or governing

186 board, (2) exceeded the hearing examiner's statutory
 187 authority, (3) was the result of fraud or deceit, (4) was
 188 clearly wrong in view of the reliable, probative and
 189 substantial evidence on the whole record, or (5) was
 190 arbitrary or capricious or characterized by abuse of
 191 discretion. Such appeal shall follow the procedure
 192 regarding appeal provided the grievant in section four
 193 of this article and provided both parties in section seven
 194 of this article.

195 (u) Upon a timely request, any employee shall be
 196 allowed to intervene and become a party to a grievance
 197 at any level when that employee claims that the
 198 disposition of the action may substantially and adversely
 199 affect his or her rights or property and that his or her
 200 interest is not adequately represented by the existing
 201 parties.

202 (v) The doctrine of laches shall not be applied to
 203 prevent a grievant or grievants from recovering back
 204 pay or other appropriate relief for a period of one year
 205 prior to the filing of a grievance based upon a contin-
 206 uing practice.

§18-29-4. Procedural levels and procedure at each level.

1 (a) Level one.

2 (1) Before a grievance is filed and within fifteen days
 3 following the occurrence of the event upon which the
 4 grievance is based, or within fifteen days of the date on
 5 which the event became known to the grievant or within
 6 fifteen days of the most recent occurrence of a contin-
 7 uing practice giving rise to a grievance, the grievant or
 8 the designated representative shall schedule a confer-
 9 ence with the immediate supervisor to discuss the
 10 nature of the grievance and the action, redress or other
 11 remedy sought.

12 The conference with the immediate supervisor con-
 13 cerning the grievance shall be conducted within ten
 14 days of the request therefor, and any discussion shall be
 15 by the grievant in the grievant's own behalf or by both
 16 the grievant and the designated representative.

17 (2) The immediate supervisor shall respond to the

18 grievance within ten days of the conference.

19 (3) Within ten days of receipt of the response from the
20 immediate supervisor following the informal conference,
21 a written grievance may be filed with said supervisor
22 by the grievant or the designated representative on a
23 form furnished by the employer or agent.

24 (4) The immediate supervisor shall state the decision
25 to such filed grievance within five days after the
26 grievance is filed.

27 (b) Level two.

28 Within five days of receiving the decision of the
29 immediate supervisor, the grievant may appeal the
30 decision to the chief administrator, and such adminis-
31 trator or his or her designee shall conduct a hearing in
32 accordance with section six of this article within five
33 days of receiving the appeal and shall issue a written
34 decision within five days of such hearing. Such decision
35 may affirm, modify or reverse the decision appealed
36 from. Level four hearing examiners or the chief
37 administrator shall have the authority to subpoena
38 witnesses and documents for level two and level three
39 hearings in accordance with the provision of section one,
40 article five, chapter twenty-nine-a of this code, and may
41 issue a subpoena upon the written request of any party
42 to the grievance.

43 (c) Level three.

44 Within five days of receiving the decision of the chief
45 administrator, the grievant may appeal the decision to
46 the governing board of the institution or may proceed
47 directly to level four. An appeal to the governing board
48 shall set forth the reasons why the grievant is seeking
49 a level three review of the decision of the chief
50 administrator. Within five days of receiving the appeal,
51 such governing board may conduct a hearing in
52 accordance with section six of this article, may review
53 the record submitted by the chief administrator and
54 render a decision based on such record, or may waive
55 the right granted herein and shall notify the grievant
56 of such waiver. Any decision by the governing board,

57 including a decision to waive participation in the
 58 grievance, shall be in writing and shall set forth the
 59 reasons for such decision, including the decision to waive
 60 participation in the grievance. If a hearing is held under
 61 the provisions of this subsection, the governing board
 62 shall issue a decision affirming, modifying or reversing
 63 the decision of the chief administrator within five days
 64 of such hearing.

65 (d) Level four.

66 (1) If the grievant is not satisfied with the action taken
 67 by the chief administrator, or, if appealed to level three,
 68 the action taken by the governing board, within five
 69 days of the written decision the grievant may request,
 70 in writing, on a form furnished by the employer, that
 71 the grievance be submitted to a hearing examiner as
 72 provided for in section five of this article, such hearing
 73 to be conducted in accordance with section six of this
 74 article within ten days following the request therefor:
 75 *Provided*, That such hearing may be held within thirty
 76 days following the request, or within such time as is
 77 mutually agreed upon by the parties, if the hearing
 78 examiner gives reasonable cause, in writing, as to the
 79 necessity for such delay.

80 (2) Within thirty days following the hearing, the
 81 hearing examiner shall render a decision in writing to
 82 all parties setting forth findings and conclusions on the
 83 issues submitted. Subject to the provisions of section
 84 seven of this article, the decision of the hearing
 85 examiner shall be final upon the parties and shall be
 86 enforceable in circuit court.

87 All information and data generated by the board and
 88 in its custody relative to level four decisions and copies
 89 of such decisions shall be provided at reasonable cost to
 90 any individual requesting it.

§18-29-6. Hearings generally.

1 The chief administrator or his or her designee, the
 2 governing board or the hearing examiner shall conduct
 3 all hearings in an impartial manner and shall ensure
 4 that all parties are accorded procedural and substantive

5 due process. All parties shall have an opportunity to
6 present evidence and argument with respect to the
7 matters and issues involved, to cross examine and to
8 rebut evidence. Notice of a hearing shall be sent to all
9 parties and their named representative and shall
10 include the date, time and place of the hearing.

11 The institution that is party to the grievance shall
12 produce prior to such hearing any documents, not
13 privileged, and which are relevant to the subject matter
14 involved in the pending grievance, that has been
15 requested by the grievant, in writing.

16 The superintendent, the president of the state or
17 county board of education or the state or county board
18 member designated by such president, the executive
19 director of the regional educational service agency, the
20 director of the multi-county vocational center, the
21 chancellor of the higher education governing boards, the
22 president of any state institution of higher education, the
23 senior administrator, the chief administrator or his or
24 her designee, each member of the governing board or
25 the hearing examiner shall have the power to (1)
26 administer oaths and affirmations, (2) regulate the
27 course of the hearing, (3) hold conferences for the
28 settlement or simplification of the issues by consent of
29 the parties, (4) exclude immaterial, irrelevant or
30 repetitious evidence, (5) sequester witnesses, (6) restrict
31 the number of advocates, and take any other action not
32 inconsistent with the rules and regulations of the board
33 or the provisions of this article.

34 All the testimony and evidence at any hearing shall
35 be recorded by mechanical means, and all recorded
36 testimony and evidence at such hearing shall be
37 transcribed and certified at the request of any party to
38 the institution or board. The institution shall be
39 responsible for promptly transcribing the testimony and
40 evidence and for providing a copy of the certified
41 transcription to the party requesting same. The institu-
42 tion shall be responsible for all costs relating to
43 preparation and duplication of the transcript. The
44 hearing examiner may also request and be provided a
45 transcript upon appeal to level four and allocate the

46 costs therefor as prescribed in section eight of this
47 article.

48 Formal rules of evidence shall not be applied, but
49 parties shall be bound by the rules of privilege recog-
50 nized by law. In any grievance involving disciplinary or
51 discharge actions, no employee may be compelled to
52 testify against himself or herself, the burden of proof is
53 on the employer, and the employer shall present its case
54 first.

55 All materials submitted in accordance with section
56 three of this article; the mechanical recording of all
57 testimony and evidence or the transcription thereof, if
58 any; the decision; and any other materials considered in
59 reaching the decision shall be made a part and shall
60 constitute the record of a grievance. Such record shall
61 be submitted to any level at which appeal has been
62 made, and such record shall be considered, but the
63 development of such record shall not be limited thereby.

64 Every decision pursuant to a hearing shall be in
65 writing and shall be accompanied by findings of fact
66 and conclusions of law. Prior to such decision any party
67 may propose findings of fact and conclusions of law.

§18-29-8. Allocation of costs.

1 Any expenses incurred relative to the grievance
2 procedure at levels one through three shall be borne by
3 the party incurring such expenses except as to the costs
4 of transcriptions as provided for in section six of this
5 article.

6 In the event an employee or employer appeals an
7 adverse level four decision to the circuit court or an
8 adverse circuit court decision to the supreme court, and
9 the employee substantially prevails upon such appeal,
10 the employee or the organization representing the
11 employee is entitled to recover court costs and reasona-
12 ble attorney fees, to be set by the court, from the
13 employer.

§18-29-10. Mediation.

1 To such extent as may be feasible with existing

2 personnel and resources, the education employees
3 grievance board shall attempt mediation and other
4 alternative dispute resolution techniques to actively
5 assist the parties in identifying, clarifying and resolving
6 issues regarding the grievance at any time prior to the
7 level four hearing.

8 All of the information that is provided by the parties
9 during mediation shall remain confidential. Mediators
10 shall not be called as witnesses to provide testimony in
11 unresolved grievances that proceed to a grievance
12 hearing, and any hearing examiner involved in a
13 mediation process shall not hear the grievance nor be
14 consulted regarding the merits of the grievance.

15 The education employees grievance board shall
16 monitor the results of all mediation attempts and report
17 to the legislature prior to the first day of January, one
18 thousand nine hundred ninety-three, regarding the
19 feasibility of the process, the cost effectiveness of the
20 process, the success of the process in resolving grievan-
21 ces, the resources which would be required to expand
22 the process, and such other information or recommen-
23 dations as the grievance board may deem appropriate
24 and helpful.

§18-29-11. Compilation and dissemination of data.

1 In addition to such other data as may be required
2 under the provisions of this article, beginning with the
3 quarter ending the first day of October, one thousand
4 nine hundred ninety-two, the education employees
5 grievance board shall provide each governing board and
6 employee organization, within thirty days of the end of
7 each quarter, a statewide quarterly report summarizing
8 matters decided by the hearing examiners during the
9 preceding quarter. Each report shall set forth any
10 information deemed to be helpful in providing an
11 overview of grievance-related issues: *Provided*, That
12 nothing contained in the report shall breach the
13 confidentiality of a grievant or other person, nor shall
14 any matter be disclosed if the disclosure may violate any
15 provision of law. The grievance board shall make an
16 effort to provide information applicable to particular

17 counties, institutions or governing boards, as may be
18 appropriate.

19 Each report shall then be distributed to each member
20 of the governing board so that the governing board may
21 monitor the significant personnel-related matters which
22 came before the grievance board and thereby ascertain
23 whether any personnel policies need to be reviewed,
24 revised or enforced.

25 Each quarterly report shall be incorporated into the
26 annual report required by section five of this article,
27 which shall also be distributed to each governing board
28 and employee organization.

Enr. Com. Sub. for H. B. 4602] 18

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Tomer Leck
.....
Chairman Senate Committee

Ernest C Moore
.....
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Parrell E. Adams
.....
Clerk of the Senate

Donald G. Kopp
.....
Clerk of the House of Delegates

Walter Burdette
.....
President of the Senate

Bob Cole
.....
Speaker of the House of Delegates

The within is approved this the 17th
day of March, 1992.

Yaston Caperton
.....
Governor

PRESENTED TO THE

GOVERNOR

Date 3/13/92

Time 4:16 pm