

THE WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD

**SCOTT GRIMMETT,
Grievant,**

v.

Docket No. 2022-0859-CONS

**LOGAN COUNTY BOARD OF EDUCATION AND
DEPARTMENT OF EDUCATION,
Respondents.**

DECISION

Grievant, Scott Grimmatt, was employed by Respondent, Logan County Board of Education. On June 16, 2022, Grievant¹ filed this grievance against Respondent stating:

WV Code § 6C-2-2 Grievance. §126-16 WVBOE Policy 2419 Chapter 6, Section 4 provision of staff and any other pertaining to the matter. Logan County Schools was not in compliance with state law staffing requirements and other criteria for special education students. At Logan Middle School in Logan County, special education teachers Scott Grimmatt, Sherry Davis, and Shawn Lester (long-term sub) taught overage class sizes of special education students for the entirety of the school year. Students in these classes were at least at the Level II rating, some at the Level III rating. These students were 5th and 6th grade levels. At Man Middle School in Logan County, special education students qualifying for an inclusion specialist were combined with regular education students without a special education inclusion specialist for most of the year.

For relief, Grievant sought as follows:

A. That Logan County School District comply with special education requirements as provided in WV Board of Education Policy §126-16 for special education students, particularly by providing the staffing as outlined therein.

B. In the event of overage class sizes for special education due to staffing shortages or other instances, that special education teachers be afforded identical means and

¹ Grievant filed jointly with Sherri Davis. Grievant Davis later withdrew and was dismissed as a party by order entered October 17, 2023.

provisions to apply for compensation for teaching overage classes as is provided for regular education teachers.

C. That the above-named special education teachers be compensated for their overage classes for the 2021- 2022 school year, with all back pay due.

Following the September 13, 2022, level one conference, a level one decision was rendered on September 19, 2022, denying the grievance. Grievant appealed to level two on September 27, 2022. Following mediation, Grievant appealed to level three of the grievance process on October 27, 2022. By order entered December 2, 2022, the Department of Education was joined as a party due to its intervention into the Logan County school system. A level three hearing was held on May 24, 2023, before the undersigned at the Grievance Board's Charleston, West Virginia office. Grievant appeared in person and was represented by Andrew Katz, The Katz Working Families' Law Firm, LC and Ray Wright, Staff Specialist, West Virginia Education Association.² Respondent Logan County Board of Education was represented by counsel, Donald C. Wandling, Wandling Law Office. Respondent Department of Education declined to appear.³ This matter became mature for decision on November 22, 2023, upon final receipt of the parties' written Proposed Findings of Fact and Conclusions of Law.

² Grievant Davis requested a continuance the morning of the hearing due to illness, which was denied with the accommodation that she could appear by phone to attend and also offer her testimony on a later date by videoconference. Grievant Davis did not appear. At the conclusion of the hearing, Grievants' counsel was directed to confer with Grievant Davis and provide dates to schedule her testimony. Grievants' counsel did not provide dates. By order entered October 6, 2023, Grievant Davis was again ordered to provide dates or the record would be closed. Grievant Davis then withdrew her grievance and was dismissed as a party.

³ Respondent Department of Education is represented by Anthony D. Eates, Deputy Attorney General. By email dated April 20, 2023, Mr. Eates informed the Grievance Board that the Department of Education's interests were adequately protected

Synopsis

Grievant was employed by Respondent as a special education teacher. Grievant sought back pay to compensate him for being required to teach more than the maximum number of special education students allowed by legislative rule. Grievant failed to prove he was entitled to additional compensation. Accordingly, the grievance is denied.

The following Findings of Fact are based upon a complete and thorough review of the record created in this grievance:

Findings of Fact

1. Grievant was employed by Respondent as a special education teacher at Logan Middle School.
2. For school year 2021 – 2022, Grievant taught special education for grades five through eight.
3. Special education students are classified into three levels of exceptionality.
4. Grievant's students were all either Level 2 or Level 3.
5. For Grievant's students' level of exceptionality, the West Virginia Board of Education's legislative rule mandates a minimum teacher/aide to student ratio of one to six and a maximum class size of twelve.
6. For school year 2021 – 2022, four of Grievant's classes exceeded the ratio and three exceeded the maximum class size. Grievant's largest class contained eighteen students.

by the representation of Logan County Schools and Respondent Department of Education would not appear at the level three hearing.

7. For regular education grades one through six, the maximum teacher to student ratio is one to twenty-five and teachers are entitled to additional compensation if the maximum number of students is exceeded.

8. Prior to the level three hearing, Grievant resigned.

Discussion

As this grievance does not involve a disciplinary matter, Grievant has the burden of proving his grievance by a preponderance of the evidence. W. VA. CODE ST. R. § 156-1-3 (2018). “The preponderance standard generally requires proof that a reasonable person would accept as sufficient that a contested fact is more likely true than not.” *Leichliter v. Dep’t of Health & Human Res.*, Docket No. 92-HHR-486 (May 17, 1993), *aff’d*, Pleasants Cnty. Cir. Ct. Civil Action No. 93-APC-1 (Dec. 2, 1994). Where the evidence equally supports both sides, the burden has not been met. *Id.*

Grievant clarified at level three that the relief he seeks is to be paid back pay to compensate him for the additional students he was required to teach for the 2021 – 2022 school year. Grievant asserts he is entitled to compensation based on the Grievance Board’s authority to make Grievant “whole.” Respondent asserts Grievant is not entitled to additional pay.

For regular education grades one through six, the maximum teacher to student ratio is one to twenty-five. W. VA. CODE § 18-5-18a(a) (2021). If the ratio is exceeded, the teacher is entitled to additional compensation for each student over the ratio. W. VA. CODE § 18-5-18a(e). The West Virginia Board of Education’s *Regulations for the Education of Students with Exceptionalities (2419)* limits further the maximum number of special education students per instruction period to twelve and requires a teacher/aide to

student staffing ratio of one to six. W. VA. CODE ST. R. § 126-16-6.4B (2017). The rule provides: “When student numbers exceed staffing ratios a waiver must be submitted. Waivers to staffing ratios may be requested in writing through the OSE waiver process. Waivers may require an on-site visit, will be considered on a case-by-case basis and remain valid for the current school year only.” *Id.*

Although the legislative rule mandates the maximum class size and teacher/student ratio for special education students, unlike the statute regarding regular education teacher/student ratios, it does not provide for additional pay for overage. Instead, the legislative rule only states that if the maximums are exceeded, then a waiver must be filed. Grievant asserts the same compensation for overage provided in West Virginia Code § 18-5-18a(a) should be applied under the Grievance Board’s authority to provide a “make whole” remedy. A grievant is made whole by granting the relief to which a grievant is entitled. Grievant is simply not entitled to compensation. West Virginia Code § 18-5-18a(a) is specific to classes over twenty-five students and the legislative rule does not provide a mechanism for additional payment for exceeding its lower maximums for special education students.

The following Conclusions of Law support the decision reached.

Conclusions of Law

1. As this grievance does not involve a disciplinary matter, Grievant has the burden of proving his grievance by a preponderance of the evidence. W. VA. CODE ST. R. § 156-1-3 (2018). “The preponderance standard generally requires proof that a reasonable person would accept as sufficient that a contested fact is more likely true than not.” *Leichliter v. Dep’t of Health & Human Res.*, Docket No. 92-HHR-486 (May 17, 1993),

aff'd, Pleasants Cnty. Cir. Ct. Civil Action No. 93-APC-1 (Dec. 2, 1994). Where the evidence equally supports both sides, the burden has not been met. *Id.*

2. For regular education grades one through six, the maximum teacher to student ratio is one to twenty-five. W. VA. CODE § 18-5-18a(a) (2021). If the ratio is exceeded, the teacher is entitled to additional compensation for each student over the ratio. W. VA. CODE § 18-5-18a(e).

3. The West Virginia Board of Education's *Regulations for the Education of Students with Exceptionalities (2419)* limits further the maximum number of special education students per instruction period to twelve and requires a teacher/aide to student staffing ratio of one to six. W. VA. CODE ST. R. § 126-16-6.4B (2017). The rule provides: "When student numbers exceed staffing ratios a waiver must be submitted. Waivers to staffing ratios may be requested in writing through the OSE waiver process. Waivers may require an on-site visit, will be considered on a case-by-case basis and remain valid for the current school year only." *Id.*

4. Grievant failed to prove he was entitled to compensation for being required to teach more than the maximum number of special education students allowed by legislative rule.

Accordingly, the grievance is DENIED.

Any party may appeal this decision to the Intermediate Court of Appeals.⁴ Any such appeal must be filed within thirty (30) days of receipt of this decision. W. VA. CODE

⁴ On April 8, 2021, Senate Bill 275 was enacted creating the Intermediate Court of Appeals. The act conferred jurisdiction to the Intermediate Court of Appeals over "[f]inal judgments, orders, or decisions of an agency or an administrative law judge entered after

§ 6C-2-5. Neither the West Virginia Public Employees Grievance Board nor any of its Administrative Law Judges is a party to such appeal and should not be named as a party to the appeal. However, the appealing party is required to serve a copy of the appeal petition upon the Grievance Board by registered or certified mail. W. VA. CODE § 29A-5-4(b).

DATE: January 12, 2024

Billie Thacker Catlett
Chief Administrative Law Judge

June 30, 2022, heretofore appealable to the Circuit Court of Kanawha County pursuant to §29A-5-4 or any other provision of this code[.]” W. VA. CODE § 51-11-4(b)(4). The West Virginia Public Employees Grievance Procedure provides that an appeal of a Grievance Board decision be made to the Circuit Court of Kanawha County. W. VA. CODE § 6C-2-5. Although Senate Bill 275 did not specifically amend West Virginia Code § 6C-2-5, it appears an appeal of a decision of the Public Employees Grievance Board now lies with the Intermediate Court of Appeals.