

THE WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD
ANGELA CHRISTINE MORGAN,

Grievant,

v .

Docket No. 2025-0002-RaIED

RALEIGH COUNTY BOARD OF EDUCATION,

Respondent.

DISMISSAL ORDER

Grievant, Angela Morgan, is employed as an Aide by Respondent, Raleigh County Board of Education. On July 1, 2024, Grievant filed a grievance stating:

On June 3, 2024, Angela Morgan (Grievant) missed the last day of her contract for the 2023-2024 school year. Grievant was out of days, but had a doctor's appointment and doctor's excuse from her supervisor. On or about June 14, 2024, grievant's pay check reflected 6 days of lost pay. However, the grievant only missed one day of work. The grievant was docked 5 additional days (OSE) of pay after missing only one day of work.

As relief:

Grievant seeks the reinstatement of pay from the 5 OSE days that were docked from her paycheck with interest along with any possible docked seniority and or benefits. The grievant also seeks any and all other relief the hearing examiner deems appropriate as a result of the actions by the Respondent.

A level one decision was issued on August 23, 2024. Grievant appealed to level two on September 3, 2024, and level three on November 14, 2024. The matter lingered for over a year due to Grievant being on leave. The grievance proceeded when Grievant eventually resigned due to her inability to return to work.

On March 20, 2026, Respondent filed a motion to dismiss for failure to state a claim upon which relief could be granted. A hearing was held on the motion before the undersigned via videoconference on April 16, 2026. Grievant appeared and was represented by Brandon Tinney, Education West Virginia. Respondent appeared by Superintendent Serena Starcher and was represented by George “Trey” B. Marrone III, Bowles Rice LLP. Each party submitted proposed findings of fact and conclusions of law.

Synopsis

Grievant was employed by Respondent, Raleigh County Board of Education, as an Aide when she missed the last workday of the school year. Because Grievant did not have any paid leave remaining, Respondent placed her on unpaid leave and therefore did not pay her for 5 subsequent Outside School Environment (OSE) days. Grievant grieved the non-payment of these days. Respondent filed a motion to dismiss. Respondent proved that the requested relief could not be granted based on an interpretation by the State Superintendent of Schools covering this situation. Grievant did not prove that this interpretation was clearly erroneous. Accordingly, the grievance is DISMISSED.

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, Raleigh County Board of Education, under a 200-day continuing employment contract.

2. Under that contract, Grievant received a total of 15 days of paid personal leave each year and was allowed to carry over any unused leave from year-to-year without limitation.

3. At the start of the 2023-2024 school year, Grievant had no accumulated leave to carry over but did accrue 15 days of paid personal leave for the year.

4. On February 29, 2024, Grievant exhausted her 15 days of paid personal leave for the 2023-2024 school year and had no leave available for the remainder of the school year.

5. On Friday, May 31, 2024, Grievant notified Principal Doss by text that she had a doctor's appointment on Monday, June 3, 2024, and asked if she could leave early.

6. Principal Doss informed Grievant that she could leave early at 1:30 p.m. on June 3, 2024, but had to begin work early that day to make up the difference since she had no leave remaining.

7. Grievant did not show up for work on June 3, 2024, meaning she was absent without leave since she had exceeded her available leave. Grievant was therefore placed on unpaid leave status for that same day, which was the last day of Grievant's contract for the 2023-2024 school year.

8. Even though Grievant was out of leave, Grievant had a doctor's excuse for her supervisor. However, Grievant did not seek or obtain a board-approved leave of absence at any time during the 2023-2024 school year, including the unpaid leave status that began on June 3, 2024.

9. Grievant had 5 non-working Outside School Environment (OSE) days (June 4, 5, 6, 7, and 10) for that last pay period.

10. However, Respondent decided not to pay Grievant for these 5 OSE days based on an interpretation set forth on December 10, 1987, by the State Superintendent of Schools, in question-and-answer format, as follows:

If a service or professional employee has used up all of his/her personal leave and vacation days, and is unable to return to work and has not requested a leave of absence, is the employee entitled to pay a) when a holiday falls during the employment month and b) for board-approved paid days (i.e., outside-the-school environment days or snow days)?

No, because the service or professional employee is on unpaid employment status.

11. Grievant's paycheck for June 14, 2024, reflected 6 days of lost pay, which were the 5 OSE days and the final workday of the school year when Grievant failed to report to work.

12. Grievant continued on unpaid leave for a number of months thereafter until she resigned in February 2025, due to her inability to return to work.

Discussion

"Grievances may be disposed of in three ways: by decision on the merits, nonappealable dismissal order, or appealable dismissal order." W. VA. CODE ST. R. § 156-1-6.19. "Nonappealable dismissal orders may be based on grievances dismissed for the following: settlement; withdrawal; and, in accordance with Rule 6.15, a party's failure to pursue." W. VA. CODE ST. R. § 156-1-6.19.2. "Appealable dismissal orders may be issued in grievances dismissed for all other reasons, including, but not limited to, failure to state a claim or a party's failure to abide by an appropriate order of an administrative law judge. Appeals of any cases dismissed pursuant to this provision are to be made in the same manner as appeals of decisions on the merits." W. VA. CODE ST. R. § 156-1-6.19.3.

Even though Grievant missed her last working day of the school year without any available leave remaining, Grievant claims entitlement to pay for 5 OSE days that occurred after she was placed on unpaid status. Respondent counters that Grievant failed to state a claim on which relief could be granted. Respondent argues that, because Grievant missed her last workday, had no paid leave left to cover it, and did not request a leave of absence, Grievant was properly placed on unpaid leave retroactive to the beginning of the day she missed, which fell before the 5 OSE days. Respondent contends that Grievant was therefore not entitled to be paid for the 5 OSE days.

In support thereof, Respondent cites an interpretation by the State Superintendent of Schools set forth on December 10, 1987, in question-and-answer format, as follows:

If a service or professional employee has used up all of his/her personal leave and vacation days, and is unable to return to work and has not requested a leave of absence, is the employee entitled to pay a) when a holiday falls during the employment month and b) for board-approved paid days (i.e., outside-the-school environment days or snow days)?

No, because the service or professional employee is on unpaid employment status.

It is apparent that Grievant missed her last day of work for the 2023-2024 school year, that she had already expended all her paid leave for the school year when she missed that day, that she did not request a leave of absence, that she was unable to return to work (as evidenced by her doctor excuse, continuing absence, and resignation for medical reasons), and that she was placed on unpaid leave prior to the occurrence of the 5 OSE days.

The issue then is the weight to be given to an interpretation rendered by the State Superintendent of Schools. "An interpretation by the State Superintendent of Schools of

State Board of Education Policy is considered as persuasive authority and will be applied unless clearly erroneous. *Smith v. Logan County Board of Education*, 341 S.E.2d 685 (W.Va. 1985); *Billy A. Moore v. Fayette County Board of Education*, Docket No. 10-86-137-1.” *Thompson v. Kanawha County Board of Education*, Docket No. 20-86-366-1 (July 31, 1987).

However, Grievant did not present evidence that this interpretation was clearly erroneous. Grievant argues that the parties are bound by their written contract and West Virginia Code § 18A-2-5(7). West Virginia Code § 18A-2-5(7) states: “This contract may be terminated or modified at any time by the mutual consent of the Board and the Employee.” However, Grievant did not provide or even quote from her contract. Thus, Grievant did not show whether the contract covered the situation that led to this grievance or accorded a different remedy than the one provided by Respondent. Grievant also mentions Respondent’s own policy but failed to quote or cite any particular section that could arguably entitle her to the relief requested. Thus, Grievant did not show that the interpretation provided by the State Superintendent of Schools was clearly erroneous.

“A grievance may be dismissed, in the discretion of the administrative law judge, if no claim on which relief can be granted is stated or a remedy wholly unavailable to the grievant is requested.” W. VA. CODE ST. R. § 156-1-6.11. When it is not possible for any actual relief to be granted, any ruling issued by the Grievance Board would merely be an advisory opinion. *Smith v. Lewis County Bd. of Educ.*, Docket No. 02-21-028 (June 21, 2002); *Spence v. Div. of Natural Res.*, Docket No. 2010-0149-CONS (Oct. 29, 2009). “This Grievance Board does not issue advisory opinions. *Dooley v. Dep’t of Transp.*, Docket No. 94-DOH-255 (Nov. 30, 1994); *Pascoli & Kriner v. Ohio County Bd. of Educ.*,

Docket No. 91-35-229/239 (Nov. 27, 1991).” *Priest v. Kanawha County Bd. of Educ.*, Docket No. 00-20-144 (Aug. 15, 2000). Respondent proved that the Grievance Board cannot provide the relief requested. Thus, this grievance must be dismissed.

The following Conclusions of Law support the dismissal of this grievance

Conclusions of Law

1. “A grievance may be dismissed, in the discretion of the administrative law judge, if no claim on which relief can be granted is stated or a remedy wholly unavailable to the grievant is requested.” W. VA. CODE ST. R. § 156-1-6.11.

2. “Grievances may be disposed of in three ways: by decision on the merits, nonappealable dismissal order, or appealable dismissal order.” W. VA. CODE ST. R. § 156-1-6.19. “Nonappealable dismissal orders may be based on grievances dismissed for the following: settlement; withdrawal; and, in accordance with Rule 6.15, a party's failure to pursue.” W. VA. CODE ST. R. § 156-1-6.19.2. “Appealable dismissal orders may be issued in grievances dismissed for all other reasons, including, but not limited to, failure to state a claim or a party's failure to abide by an appropriate order of an administrative law judge. Appeals of any cases dismissed pursuant to this provision are to be made in the same manner as appeals of decisions on the merits.” W. VA. CODE ST. R. § 156-1-6.19.3.

3. “An interpretation by the State Superintendent of Schools of State Board of Education Policy is considered as persuasive authority and will be applied unless clearly erroneous. *Smith v. Logan County Board of Education*, 341 S.E.2d 685 (W.Va. 1985); *Billy A. Moore v. Fayette County Board of Education*, Docket No. 10-86-137-1.” *Thompson v. Kanawha County Board of Education*, Docket No. 20-86-366-1 (July 31, 1987).

4. Respondent proved that the Grievance Board cannot grant the relief requested by Grievant.

Accordingly, the grievance is DISMISSED.

“The decision of the administrative law judge is final upon the parties and is enforceable in the circuit court situated in the judicial district in which the grievant is employed.” W. VA. CODE § 6C-2-5(a) (2024). “An appeal of the decision of the administrative law judge shall be to the Intermediate Court of Appeals in accordance with §51-11-4(b)(4) of this code and the Rules of Appellate Procedure.” W. VA. CODE § 6C-2-5(b). Neither the West Virginia Public Employees Grievance Board nor any of its Administrative Law Judges is a party to such an appeal and should not be named as a party to the appeal. However, the appealing party must serve a copy of the petition upon the Grievance Board by registered or certified mail. W. VA. CODE § 29A-5-4(b) (2024).

DATE: June 26, 2026

Joshua S. Fraenkel
Administrative Law Judge