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**Members**  
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SECRETARY OF STATE  
**WEST VIRGINIA EDUCATION AND  
STATE EMPLOYEES GRIEVANCE BOARD**  
ARCH A. MOORE, JR.  
Governor

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**IVA JEWELL WILBURN**

**v.**

**Docket No. 20-88-089**

**KANAWHA COUNTY BOARD OF EDUCATION**

**DECISION**

Grievant Iva Jewell Wilburn, a sixth grade teacher at Grandview Elementary School in Kanawha County, West Virginia, requested professional leave to attend, as a delegate and a speaker, the annual meeting of the West Virginia Education Association on May 12 and May 13, 1988. Grievant's request was approved by her immediate supervisor, Ronald E. Duerring, the principal of Grandview Elementary School, but was denied by Joseph Godish, Assistant Superintendent of Elementary Schools.

On March 31, 1988, Grievant filed this grievance. Ronald Duerring waived his participation at Level I of this grievance procedure. The Level II grievance hearing was held on April 27, 1988, and the grievance evaluator issued his decision denying the grievance on May 6, 1988. On the Level IV appeal form Grievant stated that the parties tentatively agreed to

submit the grievance for decision on the record of the Level II proceedings. Final notification was provided by letter dated June 29, 1988, from Grievant's representative in the proceedings, Kathleen W. Smith.

Grievant has contended throughout these proceedings that the denial of professional leave was discriminatory and contrary to Kanawha County Board of Education Policy IV-J-9.<sup>1</sup>

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<sup>1</sup> Board of Education Policy IV-J-9 provides in pertinent part,

LEAVE - PROFESSIONAL LEAVE: ABSENCE FROM DUTY WITHOUT LOSS OF PAY

Professional personnel may be absent from duty without loss of pay provided permission for absence is obtained from the Superintendent, through the immediate supervisor and the Division/Department concerned.

Written requests for Absence From Duty Without Loss of Pay will be routed as follows:

1. To the immediate supervisor, and if approved
2. To the Division/Department head concerned, or his designee, and if approved
3. To the Superintendent of Schools.

Cases acted upon (approved or rejected) will be routed back through the same channels, plus a copy to the Division of Personnel for the employee's record file. However, no teacher or principal may be excused for more than five days during any one school year except by direct action of the Board of Education.

Permission may be granted only in the following areas:

1. Personnel necessarily absent because they are serving as officers or delegates in a meeting of a professional organization, or who are to appear on a program at the meeting.
2. Personnel requested by the State Department of Education to participate in committee work or to attend a meeting called by the State Department of Education for the purpose of school improvement.
3. Personnel whose duties can be absorbed by the faculty of the school in which they teach, provided prior approval is secured from the principal of the school before a written request is made to the Division/Department head concerned.

Respondent Board denies that Policy IV-J-9 was misapplied, contending that it was a proper exercise of discretion under that policy to deny Grievant's request in accordance with an oral directive issued by the Superintendent of Schools in January 1988 that from then on requests for professional leave should be denied if release of the individual would require a substitute. <sup>2</sup>

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<sup>2</sup> Grievant specifically maintains that Policy IV-J-9 provides for three different types of leave requests and there is no basis under that policy to attach a condition that no substitute be necessary to the type of leave she requested, number "2" of the policy, see footnote 1. Grievant further contends that the directive is invalid and unenforceable because it was not in writing, not issued at the beginning of the school year, not promulgated in accordance with Kanawha County Board of Education procedures, and contrary to the policy of the West Virginia Board of Education that "School employees are entitled to meet together, form associations and work in concert in order to improve their circumstances or the circumstances of the schools." West Virginia Board of Education Policy 5300(3). Grievant additionally maintains that because the absence of teachers requires substitutes and the absence of administrators does not, action under the directive is discriminatory against teachers. Finally, Grievant contends that, although approval of the second day of leave would have resulted in more than five days in total of professional leave approved for the 1987-88 school year, she was entitled under Policy IV-J-9 to have her request submitted to the Board of Education.

The Board responds that under Policy IV-J-9 professional leave must be approved by the immediate supervisor, the division/department head and the Superintendent of Schools, and the Assistant Superintendent of Elementary Schools did not abuse his discretion in denying Grievant leave based on the directive; that compliance with the directive was not discriminatory in that Grievant did not show that any other personnel were granted professional leave when a substitute would be needed; and that Grievant had no right that her request, denied by her department head, be submitted to the Board of Education, for under Policy IV-J-9 only a request already approved by the immediate supervisor and department/division head would be submitted to the Board of Education.

In addition to the foregoing, the following findings of fact and conclusions of law are appropriate.

#### FINDINGS OF FACT

1. On the forms provided to pursue this grievance to Level II, in response to the question, "What would resolve the grievance," Grievant stated, "Approval of the leave without substitution in a timely manner to permit advance approval by the Board of Education as per Kanawha County Board of Education Policy IV-J-9."

2. Where the Level IV appeal form requests that the grievant provide a "STATEMENT OF GRIEVANCE: (include a brief statement of the nature of the grievance, the relief sought...)", Grievant argued that she should have been granted leave, and did not request any remedy. Grievant signed the completed form on May 24, 1988.

3. The only remedy that Grievant has requested throughout these proceedings, to be granted professional leave on May 12 and May 13, 1988, was available throughout the Level II proceedings, for those proceedings predated May 12th. However, even though Grievant's Level IV appeal was filed May 24th, Grievant has made no further request for any other remedy, but instead is asking for a ruling that she should have been granted leave.

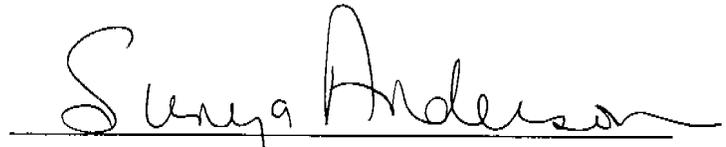
## CONCLUSIONS OF LAW

1. Because the only remedy requested by Grievant cannot be granted at this time, the issue of whether the denial of leave was improper is moot, and consideration of the issue would be an advisory opinion. See Harper v. Wayne County Board of Education, Docket No. 04-86-221-1 (February 26, 1987); Ledbetter v. Braxton County Board of Education, Docket No. 04-86-092 (April 15, 1986).

2. Moot questions or abstract positions, the decision of which would avail nothing in the determination of controverted rights, are not properly cognizable in the grievance procedure, Harrison v. Cabell County Board of Education, 351 S.E.2d 604 (W.Va. 1985), and this Board will therefore not issue advisory opinions. Richmond v. Raleigh County Board of Education, Docket No. 41-86-127-1 (June 9, 1986); Harper; Dunleavy v. Kanawha County Board of Education, Docket No. 20-87-102-1 (June 30, 1987).

Accordingly, this grievance must be denied without further discussion.

Either party may appeal this decision to the Circuit Court of Kanawha County and such appeal must be filed within thirty (30) days of receipt of this decision. (W.Va. Code 18-29-7). Please inform this office of your intent to do so in order that the record can be prepared and transmitted to the Court.

A handwritten signature in cursive script that reads "Sunya Anderson". The signature is written in dark ink and is positioned above a horizontal line.

**SUNYA ANDERSON  
HEARING EXAMINER**

DATED: August 29, 1988