



REPLY TO:  
401 Davis Avenue  
Suite 315  
Elkins, WV 26241  
Telephone: 636-1123

Members  
James Paul Geary  
Chairman  
Orton A. Jones  
David L. White

WEST VIRGINIA EDUCATION AND  
STATE EMPLOYEES GRIEVANCE BOARD  
Gaston Caperton, III  
Governor

Offices  
240 Capitol Street  
Suite 508  
Charleston, WV 25301  
Telephone: 348-3361

VERONICA PYLES

v.

DOCKET NO. 21-88-103

LEWIS COUNTY BOARD OF EDUCATION

DECISION

Grievant, Veronica Pyles, is employed by the Lewis County Board of Education (Board) as an itinerant art teacher. Ms. Pyles filed a level one grievance March 21, 1988 in which she alleged violations of State Board of Education Policy No. 5300 and W.Va. Code §18A-4-10 when a comment pertaining to improvement of her attendance was included on an evaluation. The grievance was denied at level one, no action was taken by the Superintendent at level two and was denied by the Board at level three. A level four appeal was filed June 8, 1988 and by agreement of both parties the matter was submitted for decision on the record supplemented by proposed findings of fact and conclusions of law received by January 12, 1989.

During the 1987-88 school term the grievant was assigned to teach art at the Alum Bridge, Polk Creek and Weston Central Elementary Schools. On or about February 24, 1988 the grievant received an evaluation which included a notation under the "Comment" section that her "attendance

could be improved". The grievant argues that she is entitled to 15 days of personal leave per school year and as the Board has failed to show that she used the leave days without cause the comment must be removed from the evaluation.

The Board argues that the comment was properly included on the evaluation as it was made from a factual basis and because attendance is one element to be considered when evaluating a teacher's ability to perform her duties.

Documentation submitted by the Board establishes that the grievant's use of sick leave has been considerably and consistently greater than that of other teachers. Since 1984 she has used approximately 81 days of leave. As she had earned only 60 days, 21 days were without pay. As attendance is an important factor in a teacher's ability to provide a course of instruction it is a reasonable and proper factor to be considered as part of her overall performance evaluation.

In addition to the foregoing narration it is appropriate to make the following specific findings of fact and conclusions of law.

#### Findings of Fact

1. The grievant has been employed as a teacher by the Lewis County Board of Education since October 1984.

2. In February 1988 the grievant received an evaluation which included a comment that her attendance

could be improved. She had missed 12-1/2 days of school at that time.

3. Since 1984 the grievant has missed approximately 81 days of school, far exceeding the usage of other staff members and exceeding the amount of leave time granted to her by 21 days.

#### Conclusions of Law

1. It is incumbent upon a grievant seeking relief pursuant to W.Va. Code §§18-29-1 et seq. to prove all of the allegations constituting the grievance by a preponderance of the evidence. Romeo v. Harrison County Board of Education Docket No. 17-88-013 (Sept. 30, 1988); Bulford v. Preston County Board of Education, Docket No. 39-87-203 (Feb. 26, 1986).

2, The grievant has failed to show any violation of State Board of Education Policy 5300 or W.Va. Code §18A-4-10. Neither has she shown that attendance may not be considered as part of her performance evaluation.

Accordingly, the grievance is **DENIED**.

Either party may appeal this decision to the Circuit Court of Lewis County or to the Circuit Court of Kanawha County and such appeal must be filed within thirty (30) days of receipt of this decision. See W.Va. Code §18-29-7. Neither the West Virginia Education and State Employees Grievance Board nor any of its Hearing Examiners is a party to such appeal, and should not be so named. Please advise this office of any intent to appeal so that the record can be prepared and transmitted to the proper Court.

DATED: January 31, 1989

Sue Keller

SUE KELLER

HEARING EXAMINER