

WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD

**PRISCILLA ANN THOMAS,
Grievant,**

v.

Docket No. 2017-1082-CONS

**LOGAN COUNTY BOARD OF EDUCATION,
Respondent.**

DECISION

Priscilla Ann Thomas, Grievant, filed two grievances against her employer, Logan County Board of Education ("LCBE"), Respondent, which were consolidated into the current matter at level one by Grievance Board letter dated October 18, 2016.¹ The original statements of grievances were filed as docket numbers 2017-0982-LogED and docket number 2017-0983-LogED, with respective grievance statements. The grievance statement for 2017-0982-LogED is several pages and provided:

3112 – BOARD-STAFF and/or Personnel Office – Staff COMMUNICATIONS, 3210 Employee Code of Conduct, 3382 Anti Harassment and Violence, harassment, favoritism, 3120.12 – SUBSTITUTES IN AREAS OF CRITICAL NEED AND SHORTAGE, Age, and not keeping every applicant's applications on job postings on file or taking stuff out of staff's employment file claiming it as lost...

The wording provided was not a concise statement, but included what was perceived to be Grievant's rendition of germane facts and argument. The entirety of the information

¹ Grievant officially filed two Grievances against Respondent with the Public Employees Grievance Board on September 16, 2016. Grievant originally attempted to file action against Respondent on August 29, 2016 with a Citizens Appeal level one form, which was outside of Logan County School Personnel Office. This form is not the proper document to file a grievance with the Public Employees Grievance Board. A persuasive argument could be made that Grievant made a good faith attempt to file her grievances on August 29, 2017. Conversely, it is also possible to recognize, as the Level One decision notes, that Grievant filing of September 16, 2017, is untimely. This decision will rule upon the issue(s) of this grievance in review of the evidence of record and rule upon the merits.

provided is not reproduced but is incorporated herein by reference. The grievance statement for grievance docket number 2017-0983-LogED provided:

“3210 Employee Code of Conduct, 3382 Anti-Harassment and Violence, harassment, favoritism, Age, and not keeping every applicant’s applications on job postings on file or taking stuff out of staff’s employment file claiming it as loss or not in there anymore etc.”

The relief requested:²

Docket number 2017-0982-LogED: “Get my license(s) renewed. Discipline all people involved, etc. Give me compensation, damages, etc. Hire at least one minority of black professional teachers in each schools/buildings and central office staff.”

Docket number 2017-0983-LogED: “Hire me for the position. Discipline all people involved, etc. Give me compensation, damages, etc. Hire at least one minority of black professional teachers in each schools/buildings and central staff.”

A conference was held at level one on October 13, 2016,³ and the grievance was denied at that level on October 16, 2016. Grievant appealed to level two on November 10, 2016, and a mediation session was held on April 26, 2017. Grievant appealed to level three on May 2, 2017. This Board requested that Grievant provide a clear statement of her grievance. A phone conference with the parties was scheduled and transpired on July 5, 2017. It was requested orally and in written format that Grievant

² This Grievance Board does not award tort-like or punitive damages. The Grievance Procedure allows for fair and equitable relief, which has been interpreted by the Grievance Board to encompass such issues as back pay, travel reimbursement, and overtime, but not to include punitive or tort-like damages for pain and suffering. *Dunlap v. Dep’t of Environmental Protection*, Docket No. 2008-0808-DEP (Mar. 10, 2009). *Spangler v. Cabell County Board of Education*, Docket No. 03-06-375 (March 15, 2004); *Snodgrass v. Kanawha County Bd. of Educ.*, Docket No. 97-20-007 (June 30, 1997). The Grievance Board does not award tort-like or punitive damages. *Riedel v. W. Va. Univ.*, Docket No. 07-HE-395 (Feb. 24, 2009); *Troutman v. Dep’t of Health and Human Res./William R. Sharpe Jr. Hospital*, Docket No. 2013-0630-DHHR (April 26, 2013). Grievant’s request for specific performance relief/damages is not within the authority of this Board and will not be addressed further in this decision.

³ Grievant represents that she requested a level one hearing, but a conference was held at that level despite her expressed wishes.

provide a clear and concise statement of her grievance. Grievant was not granted permission to add an additional untimely wrongful termination grievance to the current grievance.⁴ Grievant provided an unrelenting litany of information. Not all of the information is proper evidence of record. Some data was relevant while other information was of a more dubious nature. Grievant alleged violation of:

1. Policy 3112-BOARD-STAFF COMMUNICATIONS
2. Policy 3210 Employee Code of Conduct
3. Policy 3382 Anti-Harassment and Violence
4. Favoritism/ Nepotism
5. Taking Stuff Out of Staff's Employment File Claiming it as Lost or Documents are not in file anymore.
6. Policy 0120 -Powers and Ethics, Nepotism
7. Policy 8900- Anti-Fraud
8. Civil Rights Act Policies -Race, Gender, Age discrimination

(list from Grievant's appeal of level one decision) A level three hearing was held before the undersigned Administrative Law Judge on July 31, 2017, at the Grievance Board's Charleston office. Grievant appeared *pro se*.⁵ Respondent was represented by Leslie Tyree, Esquire. This matter became mature for decision on August 30, 2017, the assigned date for the submission of the parties' proposed findings of fact and conclusions

⁴ Grievant requested to add an additional grievance to this consolidated grievance, withdrew the request and again noted an alleged wrongful dismissal grievance. West Virginia Code requires that a grievance be filed within a specified time frame specified within fifteen days of the date upon which the event became known to the employee, or within fifteen days of the most recent occurrence of a continuing practice giving rise to a grievance, see W. VA. CODE §6C-2-4. Grievant was terminated as a substitute on October 13, 2016, some nine months before the request to amend her grievance. Grievant was made aware of this termination by the publicly posted Board of Education Personnel Agenda as well as by a letter mailed to her on October 17, 2016 which advised her of her termination. Grievant did not file a grievance regarding her termination as a substitute employee within the time frames as required. The current grievance issues are non-disciplinary matters. The undersigned's request for a clear, concise statement of grievance did not empower Grievant to bring a separate and distinct untimely grievance.

⁵ "*Pro se*" is translated from Latin as "for oneself" and in this context means one who represents oneself in a hearing without a lawyer or other representative. *Black's Law Dictionary*, 8th Edition, 2004 Thompson/West, page 1258.

of law. Both parties submitted fact/law proposals.

Synopsis

Grievant was employed by Respondent as a substitute teacher. She applied for a posted Purchasing Director/Assistant Business Manager position at Respondent's central office. The posting stated that the successful applicant must hold a minimum of a Bachelor's of Arts degree in accounting. Grievant does not hold a Bachelor's of Arts degree in accounting and was not selected for the vacant position. The successful applicant held a Bachelor's of Arts degree in accounting in addition to being a CPA (Certified Public Accountant). Respondent's selection of the successful applicant for the position in question was not arbitrary and capricious, or an act of favoritism. Further, Grievant did not establish that Respondent improperly prohibited or unlawfully acted and denied Grievant the renewal of her teaching certification. It is Grievant's responsibility to be aware of certification requirements and to timely submit the appropriate educational credits/documentation for recertification. This grievance is DENIED.

After a detailed review of the entire record, the undersigned Administrative Law Judge makes the following Findings of Fact.⁶

Findings of Fact

1. Grievant, Priscilla Thomas, was employed by Respondent, Logan County Board of Education, as a substitute teacher.

⁶ Grievant provided a large quantity of documents. A significant portion of the information presented by Grievant was not necessarily limited to the issue in litigation. Grievant's strong sense of self is not lost on the undersigned Administrative Law Judge. The undersigned reviewed the documents and information presented in the file.

2. Respondent posted a central office position of Purchasing Director/Assistant Business Manager. The Vacancy Bulletin for this position was titled 2017-083RVB and was posted from July 18, 2016, until July 22, 2016. R Ex 1

3. This vacant position required the successful applicant to hold a minimum of a Bachelor's of Arts degree in accounting. See R Ex 1.

4. Grievant was interviewed for the vacant position. Grievant does not have a Bachelor's of Arts in accounting. Grievant was not the selected candidate.

5. The position was filled by the Logan County Board of Education on July 28, 2016. The successful applicant has a Bachelor's of Arts degree and is a Certified Public Accountant.

6. Separate and distinct from her application for the above referenced job opening, Grievant is a licensed substitute teacher.

7. Substitute teaching licensures expire and/or must be renewed/recertified every year prior to June 30.

8. The renewal of a teaching license is a function of the West Virginia Department of Education (WVDE).

9. There are established and identified requisites established for the renewal of teaching certification. One or more of the requisites most relevant for the instant matter is educational credits. For renewal of Grievant's licensure, Grievant was required to provide documentation certifying "six semester hrs of course work from an accredited institution of higher education that is related to the public school program." (language on renewal form).

10. Grievant experienced difficulty and/or was unable to secure the renewal of her substitute teaching license prior to June 30, 2016.

11. The WVDE did not approve certain course hours submitted by Grievant for renewal. Grievant disagreed with the determination that she did not have sufficient educational hours for recertification.

12. The approval of course work for licensure is the purview of the West Virginia Department of Education not Respondent, Logan County Board of Education.

13. Grievant had numerous credits, but not a sufficient amount of credits related to public school programs. Without the requisite course work credits Grievant did not satisfy the prescribed number of credits necessary for the license renewal option she had chosen.

14. Grievant believes Respondent bears a significant amount of blame, if not the full responsibility for the delay and/or failure in the recertification of her licensure. Grievant's opinion is over encompassing, in that she repeatedly fails to distinguish her responsibilities from Respondent's in discerning types of credit and forwarding continual education information to West Virginia Department of Education.

15. The approval of course work for licensure is the purview of the WVDE. Respondent has no control over the WVDE decision process with regard to approval or non-approval of course work for licensure.

16. During the course of this grievance Grievant, at one time or another, alleges Respondent committed acts which are a violation of:

1. Policy 3112-BOARD-STAFF COMMUNICATIONS
2. Policy 3210 Employee Code of Conduct
3. Policy 3382 Anti-Harassment and Violence

4. Favoritism/ Nepotism
5. Policy 0120 -Powers And Ethics, Nepotism
6. Policy 8900- Anti-Fraud
7. Civil Rights Act Policies -Race, Gender, Age discrimination

Grievant did not present L-3 testimony or proper evidence in the record addressing much of this list.⁷ Grievant provided this list as part of her appeal to the level one decision. Grievant also alleged that Respondent unlawfully removed vital “stuff” from her employment files.

Discussion

As this consolidated grievance does not involve a disciplinary matter, Grievant has the burden of proving her case by a preponderance of the evidence. Procedural Rules of the Public Employees Grievance Board, 156 C.S.R. 1 § 3 (2008). "A preponderance of the evidence is evidence of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not." *Petry v. Kanawha County Bd. of Educ.*, Docket No. 96-20-380 (Mar. 18, 1997). In other words, “[t]he 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. W. Va. Dep’t of Health & Human Res.*, Docket No. 92-HHR-486 (May 17, 1993). Where the evidence equally supports both sides, a party has not met its burden of proof. *Id.*

⁷ The Grievance Board has long held that elements or allegations of the grievance which are raised, but not pursued or developed will be considered abandoned. *Church v. McDowell County Bd. of Educ.*, Docket No. 33-87-214 (Nov. 30, 1987).

Grievant lists several policies and established principles of law that Respondent allegedly violated. The list is extensive, but merely citing regulating standards is not necessarily a proper grievance statement.⁸ The issue of non-selection and Grievant's recertification are the two identified issues of this grievance matter. Many of Grievant's communicated contentions are without legal relevance to the issues of this grievance. Grievant highlights a number of factual events and theorizes regarding Respondent's authority and motivations; however, unsubstantiated, unfettered and untimely allegations do not validate a grievance. Grievant may even believe some of the arguments she presented, (e.g., Grievant asserts Respondent does not like her for some reason and for nefarious reasons is disposed to causing Grievant turmoil).⁹ Nevertheless, the facts tend to tell a completely different scenario. The rationale for not selecting Grievant could be as mundane as Grievant failing to meet the prerequisites (MINIMUM QUALIFICATIONS) for the position. The vacant position required the successful applicant to hold a minimum of a Bachelor's of Arts degree in accounting. R Ex 1

Grievant's contends that the selection process for the Purchasing Director/Assistant Business Manager position was flawed, making several unsubstantiated allegations. Grievant asserts she should be awarded the position.

⁸ This Board repeatedly requested that Grievant provide a clear statement of her grievance. It was requested orally and in written format that Grievant provide a clear and concise statement of her grievance. Grievant's past response was a mixture of past and present information ranging from 2005 to 2016, an eleven-year span of material. Grievant, at the level three hearing, identified non-selection and her recertification as issues in contention. A claim of wrongful termination is not a component of this grievance.

⁹ Grievant proposes numerous rationale for Grievant's actions or lack of collaboration. Some allegations are specific in nature, conspiracy, nepotism, favoritism, retaliation etc., while others contentions are more generic, (inequitable application of rules and regulations), or just not identified but implied as unlawful practices (failure to adequately assist).

“Mere allegations alone without substantiating facts are insufficient to prove a grievance.” *Baker v. Bd. of Trustees/W Va. Univ. at Parkersburg*, Docket No. 97-BOT-359 (Apr. 30, 1998); See *Harrison v. W Va. Bd. of Directors/Bluefield State College*, Docket No. 93-BOD-400 (Apr. 11, 1995).

W. Va. Code 18A-4-8b establishes “Qualifications means the applicant holds a classification title in his or her category of employment as provided in this section and is given first opportunity for promotion and filling vacancies. Other employees then shall be considered and shall qualify by meeting the definition of the job title that relates to the promotion or vacancy, as defined in section eight of this article. If requested by the employee, the county board shall show valid cause why a service person with the most seniority is not promoted or employed in the position for which he or she applies...”

In a selection case, the grievance procedure is not intended to be a “super interview,” but rather, allows a review of the legal sufficiency of the selection process. *Thibault v. Div. of Rehab. Serv.*, Docket No. 93-RS-489 (July 29, 1994). The Grievance Board recognizes selection decisions are largely the prerogative of management, and absent the presence of unlawful, unreasonable, or arbitrary and capricious behavior, such selection decisions will generally not be overturned. *Mihaliak v. Div. of Rehab. Serv.*, Docket No. 98-RS-126 (Aug. 3, 1998). An agency's decision as to who is the best qualified applicant will be upheld unless shown by the grievant to be arbitrary and capricious or clearly wrong. *Thibault v. Div. of Rehab. Serv.*, Docket No. 93-RS-489 (July 29, 1994).

Generally, an action is considered arbitrary and capricious if the agency did not rely on criteria intended to be considered, explained or reached the decision in a manner

contrary to the evidence before it, or reached a decision that was so implausible that it cannot be ascribed to a difference of opinion. See *Bedford County Memorial Hosp. v. Health and Human Serv.*, 769 F.2d 1017 (4th Cir. 1985); *Yokum v. W. Va. Schools for the Deaf and the Blind*, Docket No. 96-DOE-081 (Oct. 16, 1996); *Trimboli v. Dep't of Health and Human Resources*, Docket No. 93-HHR-322 (June 27, 1997). Arbitrary and capricious actions have been found to be closely related to ones that are unreasonable. *State ex rel. Eads v. Duncil*, 196 W. Va. 604, 474 S.E.2d 534 (1996). An action is recognized as arbitrary and capricious when "it is unreasonable, without consideration, and in disregard of facts and circumstances of the case." *Id.* (citing *Arlington Hosp. v. Schweiker*, 547 F. Supp. 670 (E.D. Va. 1982)). While a searching inquiry into the facts is required to determine if an action was arbitrary and capricious, the scope of review is narrow, and an administrative law judge may not simply substitute his judgment for that of the authoritarian agency. See generally, *Harrison v. Ginsberg*, 169 W. Va. 162, 286 S.E.2d 276, 283 (W. Va. 1982).

Grievant did not establish, by a preponderance of the evidence, that Respondent's selection decision was arbitrary and capricious or an act of favoritism. In fact, the information of record provides the converse, Respondent had valid and legitimate rationale to prefer the successful applicant as opposed to Grievant. The successful candidate is and was better qualified. Grievant failed to show that there has been a violation of the Employee Code of Conduct by one or more of Respondent's agents in making that determination.

Grievant alludes that favoritism in the selection process rendered it flawed. Grievant highlights that certain individuals are "white" and she tends to infer she was not

given the same due deference in that she is not white. Grievant's use of broad general terms and a feeling of unfairness is interpreted as an accusation of discrimination or favoritism. This Grievance Board is authorized by statute to provide relief to employees for discrimination, and favoritism as those terms are defined in W. VA. CODE § 6C-2-2. "Discrimination" is defined by statute as "any differences in the treatment of similarly situated employees, unless the differences are related to the actual job responsibilities of the employees or are agreed to in writing by the employees." W. VA. CODE § 6C-2-2(d). "Favoritism" is defined as "unfair treatment of an employee as demonstrated by preferential, exceptional or advantageous treatment of a similarly situated employee" unless agreed to in writing or related to actual job responsibilities. W. VA. CODE § 6C-2-2(h). In order to establish either a discrimination or favoritism claim asserted under the grievance statutes, an employee must prove:

- (a) that he or she has been treated differently from one or more similarly-situated employee(s);
- (b) that the different treatment is not related to the actual job responsibilities of the employees; and,
- (c) that the difference in treatment was not agreed to in writing by the employee.

Frymier v. Higher Education Policy Comm., 655 S.E.2d 52 (2007); *See Bd. of Educ. v. White*, 216 W.Va. 242, 605 S.E.2d 814 (2004); *Chadock v. Div. of Corr.*, Docket No. 04-CORR-278 (Feb. 14, 2005).

Grievant did not meet this burden. Grievant does not hold a degree in accounting. Grievant is not similarly situated as the successful applicant, who is a Certified Public Accountant. It is not unlawful or considered favoritism to select the more qualified candidate over the applicant who does not meet the minimum qualifications for the

position. Such difference in qualification is not a racial issue or a decision which can reasonably be viewed as racial bias. It was specifically set forth at the time of posting that the vacant position required the successful applicant to hold a minimum of a Bachelor's of Arts degree in accounting.

Grievant cited a laundry list of policies Respondent allegedly violated. Grievant's failure to present relevant facts pertaining to the so-called allegation(s) falls woefully short of meeting Grievant's burden of proof (akin to abandonment).¹⁰ "Mere allegations alone without substantiating facts are insufficient to prove a grievance." *Baker v. Bd. of Trustees/W Va. Univ. at Parkersburg*, Docket No. 97-BOT-359 (Apr. 30, 1998); See *Harrison v. W Va. Bd. of Directors/Bluefield State College*, Docket No. 93-BOD-400 (Apr. 11, 1995); also see *Mooney v. Kanawha County Bd. of Educ.* Docket No. 04-20-394 (Mar. 28, 2005).

Grievant's contention that Respondent failed to timely recertify her substitute licensure also falls gravely short of persuasive. Foremost, the renewal of a teaching license is a function of the West Virginia Department of Education not the Logan County Board of Education. Grievant stresses Respondent's alleged failure to adequately explain any variation in the recertification process. Grievant had renewal options. Respondent did not force her to pursue one specific course of license renewal or

¹⁰ The Grievance Board has long held that elements or allegations of the grievance which are raised, but not pursued or developed will be considered abandoned. *Church v. McDowell County Bd. of Educ.*, Docket No. 33-87-214 (Nov. 30, 1987). Further, it is readily apparent that Grievant has initiated suit in several forms, e.g., Human Rights Commission, Ethics, civil suit etc., and has attempted to shoehorn her case into a one-size-fits-all litany of allegations. Before this Grievance Board, Grievant has failed to properly pursue numerous of the alleged breaches of duty. Grievant failed to meet her burden of proof.

corrective recourse of appeal.¹¹ Grievant's difficulty in renewing her substitute teaching license prior to June 30, 2016, was multi-layered. Grievant first disagreed with the determination that she did not have sufficient educational hours for recertification and further allocated Respondent responsible for improperly reporting her educational credits. Grievant tends to lay blame at everyone's feet but her own. Grievant's follow-up actions did not readily assist in resolving the situation.

Grievant is responsible for acquiring educational credits and accurately reporting the information. Grievant had trouble securing the renewal of her substitute teaching license prior to June 30, 2016. Vast and notable distinctions exist between the established facts of this matter and Grievant's beliefs. The renewal option she voluntarily pursued had expressed conditions. For example, Grievant was required to provide documentation certifying "six semester hrs of course work from an accredited institution of higher education that is related to the public school program." Grievant had numerous credits but not sufficient amount of credits related to public school programs. Grievant wrongfully blames Respondent for all of her troubles. This is regrettable. Grievant's fails to distinguish her responsibilities from Respondent's in discerning types of credit and forwarding educational data to the West Virginia Department of Education.

The approval of course work for licensure is the purview of the WVDE. Respondent has no control over the WVDE decision-making process with regard to

¹¹ Grievant assigns responsibility for her lack of understanding to Respondent. There was more than one optional path to acquire recertification, Grievant was free to pursue any option she preferred. Instruction and explanation for recertification is provided on line and on various forms by the West Virginia Department of Education. Grievant tends NOT to distinguish Respondent and WVDE as readily as one would expect in the circumstances of this matter.

approval or non-approval of course work for licensure. Grievant's focus on isolated late term events regarding her communications with Respondent and data in her file is of limited value. Grievant had six months to accurately communicate information to WVDE. It is not established with any degree of certainty that Respondent untimely failed to perform any required act that resulted in the delay of Grievant's recertification. WVDE did not approve certain course hours submitted by Grievant for renewal. Without the requisite course work credits, Grievant did not satisfy the prescribed number of credits necessary for routine license renewal. Once Grievant fulfilled the requisite renewal obligations and provided the documentation to the WV Department of Education her ability to substitute teach was again certified.¹² The approval of course work for licensure is the purview of WVDE, not the Logan County Board of Education. Grievant failed to establish a violation of "Anti-Harassment and Violence policy" or any relevance or violation of Substitutes in Area of Critical Need. Grievant failed to establish by a preponderance of the evidence that Respondent's actions in the confines of this case were unlawful. Grievant failed to persuasively establish that Respondent, with regard to its dealings with her, has violated any applicable standard of employer-employee conduct.

The following conclusions of law are appropriate in this matter:

Conclusions of Law

1. Because the subject of this grievance does not involve a disciplinary matter, Grievant has the burden of proving her grievance by a preponderance of the evidence.

¹² The West Virginia Department of Education has issued Grievant licensure effective September 1, 2016.

Procedural Rules of the Public Employees Grievance Board, 156 C.S.R. 1 § 3 (2008).

"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. W. Va. Dep't of Health & Human Res.*, Docket No. 92-HHR-486 (May 17, 1993). Where the evidence equally supports both sides, the employer has not met its burden. *Id.*

2. Generally, an agency's action is arbitrary and capricious if it did not rely on factors that were intended to be considered, entirely ignored important aspects of the problem, explained its decision in a manner contrary to the evidence before it, or reached a decision that is so implausible that it cannot be ascribed to a difference of view. *Bedford County Memorial Hosp. v. Health and Human Serv.*, 769 F.2d 1017 (4th Cir. 1985). Arbitrary and capricious actions have been found to be closely related to ones that are unreasonable. *State ex rel. Eads v. Duncil*, 196 W. Va. 604, 474 S.E.2d 534 (1996).

3. Grievant failed to prove that her non-selection for the posted central office position of Purchasing Director/Assistant Business Manager (2017-083RVB) was an arbitrary and capricious unlawful or unreasonable decision.

4. Grievant failed to demonstrate that she was the most qualified applicant for the position.

5. Grievant failed to demonstrate that the successful applicant was not qualified for the position, or that there was a significant flaw in the selection process.

6. In order to establish either a discrimination or favoritism claim asserted under the grievance statutes, an employee must prove:

(a) that he or she has been treated differently from one or more similarly-situated employee(s);

(b) that the different treatment is not related to the actual job responsibilities of the employees; and,

(c) that the difference in treatment was not agreed to in writing by the employee.

Frymier v. Higher Education Policy Comm., 655 S.E.2d 52 (2007); See *Bd. of Educ. v. White*, 216 W.Va. 242, 605 S.E.2d 814 (2004); *Chadock v. Div. of Corr.*, Docket No. 04-CORR-278 (Feb. 14, 2005).

7. Grievant and the successful candidate were not similarly situated employees. Grievant did not demonstrate she was treated differently than any similarly situated employee.

8. Grievant failed to demonstrate that she was a victim of discrimination or favoritism.

9. "Mere allegations alone without substantiating facts are insufficient to prove a grievance." *Baker v. Bd. of Trustees/W Va. Univ. at Parkersburg*, Docket No. 97-BOT-359 (Apr. 30, 1998); See *Harrison v. W Va. Bd. of Directors/Bluefield State College*, Docket No. 93-BOD-400 (Apr. 11, 1995).

10. Grievant failed to establish by a preponderance of the evidence that Respondent violated an applicable rule or regulation requiring it to act on behalf of Grievant.

11. Grievant failed to establish by a preponderance of the evidence that Respondent unlawfully acted to hamper, delay or bar Grievant's recertification. Grievant has failed to establish that Respondent's actions were unlawful.

Accordingly, this grievance is **DENIED**.

Any party may appeal this Decision to the Circuit Court of Kanawha County. Any such appeal must be filed within thirty (30) days of receipt of this Decision. See W. VA. CODE § 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 so named. However, the appealing party is required by W. VA. CODE § 29A-5-4(b) to serve a copy of the appeal petition upon the Grievance Board. The Civil Action number should be included so that the certified record can be properly filed with the circuit court. See *also* 156 C.S.R. 1 § 6.20 (2008).

Date: October 17, 2017

Landon R. Brown
Administrative Law Judge