DARIEL RICHARDSON,

Grievant,

v. Docket No. 05-40-033

PUTNAM COUNTY BOARD OF EDUCATION,

Respondent,

D E C I S I O N

Grievant, Dariel Richardson is employed as bus operator by the Putnam County Board of Education ("PCBOE"). He filed this grievance on April 23, 2004, asserting:

> **Violations of Putnam County Schools Curricular/Extracurricular Trip Regulations in regard to section "G - not charged because of the following number 4 - Thanksgiving, Christmas, and Spring Break only - a- ["]no charge for trips during these time periods starting with the day after the last working day and ending before the next working day."**
>
> **Relief sought: Grievant made [a] trip on Saturday, [the] day after beginning of Spring Break and was charged hours. Grievant seeks compensation for runs skipped due to being charged.**

This grievance was denied at Levels I and II, and waived at Level III. Grievant appealed to Level IV on February 3, 2005. A Level IV hearing was held on May 12, 2005, and this case became mature for decision on June 15, 2005, after receipt of the parties' proposed findings of fact and conclusions of law. (See footnote 1)

After a detailed review of the record in its entirety, the undersigned Administrative Law Judge makes the following Findings of Fact.

Findings of Fact

1. Grievant is employed as a regular bus operator. 2. On August 23, 1996, PCBOE's bus operators voted by a two-thirds majority to adopt an alternative procedure for making

extracurricular assignments. Fifty-five bus operators out of sixty-three voted to approve the new, alternative procedure. This new procedure stated, in pertinent part, "Drivers are not charged for trips missed during Thanksgiving, Christmas, and spring breaks." This plan also covered a variety of other issues regarding extracurricular assignments.

3. The new plan deals with the assignment of extracurricular trips, and the goal is for all bus operators to end the year with an equal number of trip hours. The trip hours are totaled on a "Board" in each geographical areas' lounge. This Board is kept updated by bus operators called Board Monitors. Bus operators are charged with hours (the hours are added to their total hours) when they take an extracurricular trip and when they refuse an extracurricular trip.

4. On September 9, 1996, PCBOE voted to approve the alternative plan.

5. On September 26, 1996, it appears the bus operators voted to amend the adopted plan. This plan stated at G.4.a, "Thanksgiving, Christmas, and Spring Break <u>ONLY</u> no charge for trips during these time periods, starting with the day after the last working day and ending before the next working day."

6. This amended plan was never approved by PCBOE.

7. On October 6, 1999, the then Transportation Director sent a notice to all bus operators that the recommended changes to the extracurricular trip policy had been approved by "A wide majority of the drivers [and] . . . a copy of the new policy will bedistributed. . . ." This proposal stated a bus operator is charged when "THEY TAKE A TRIP." Grt. No. 1 at Level IV. This proposal was never approved by PCBOE.

8. On March 1, 2001, there was another attempt to revise the extracurricular assignment procedure. This proposed plan had the same language regarding extracurricular assignment as Finding of Fact 5. It is unclear exactly what action was taken on this proposal by the bus operators, but it was never approved by PCBOE.

9. On September 23, 2003, because of confusion about which extracurricular assignment policy was in place, Brad Hodges, the Coordinator of Administrative Services and Allen Johnson, the Coordinator of Transportation, sent a memo to all Bus Coordinators and Board Monitors. This notice stated the September 9, 1996 extracurricular assignment policy was to be followed until there was "a two-thirds vote to change it and it is adopted by the

Board of Education." Jt. No. 1 at Level IV.

10. On February 20, 2004, Mr. Johnson sent another memo to all bus coordinators and board monitors directing them "to adhere to the trip policy procedures as ordered by Brad Hodges, Coordinator of Administrative Services, in written memorandum on September 23, 2003." This memo also reminded the bus coordinators and board monitors that, "you were instructed to "FOLLOW THIS POLICY until such time the bus operators vote by a two-thirds vote to change it and it is adopted by the Board of Education." Jt. No. 1 at Level IV.

11. Grievant took an extracurricular trip on Saturday, April 3, 2004. The last day of school before spring break was Friday, April 2, 2004. Grievant was charged for this trip.

Issues and Arguments

Grievant asserts the current policy states bus operators are not be charged for trips taken during Thanksgiving, Christmas, and spring break. He does not believe the trip he took on April 3, 2004, should be counted/added to his hours on the Board. He also avers spring break starts the Saturday after the last day of school.

Respondent asserts Grievant is incorrect about which policy governs extracurricular trips, and the policy dated September 9, 1996, is the only one approved by PCBOE. This policy states bus operators are "not charged for trips missed," not bus operators are not charged for trip taken during Thanksgiving, Christmas, and spring break. Respondent argues, in the alternative, that spring break does not include the weekend and does not start until the first week day of the following week.

Discussion

As this grievance does not involve a disciplinary matter, Grievant has the burden of proving his grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Educ. & State Employees Grievance Bd. 156 C.S.R. 1 § 4.21 (2004); Holly v. Logan County Bd. of Educ., Docket No. 96-23-174 (Apr. 30, 1997); Hanshaw v. McDowell County Bd. of Educ., Docket No. 33-88-130 (Aug. 19, 1988). See W. Va. Code § 18-29-6. "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).

"It is well settled that '[a]n administrative body must abide by the remedies and procedures it properly establishes to conduct its affairs.' Syl. Pt. 1, Powell v. Brown, 160 W. Va. 723, 238 S.E.2d 220 (1977). See Parsons v. W. Va. Dep't of Transp., Docket No.97-DOH-289 (Oct. 30, 1997); Graham v. W. Va. Parkways Economic Dev. & Tourism Auth., Docket No. 94-PEDTA-448 (Mar. 31, 1995); Bailey v. W. Va. Dep't of Transp., Docket No. 94-DOH-389 (Dec. 20, 1994). Moreover, an agency may not interpret its policies in a manner which is inconsistent with the common meaning of the language contained therein. See Watts v. W. Va. Dep't of Health & Human Resources, 195 W. Va. 430, 465 S.E.2d 877 (1995). However, where the language in a policy is either ambiguous or susceptible to varying interpretations, this Grievance Board will give reasonable deference to the agency's interpretation of its own policy. See Dyer v. Lincoln County Bd. of Educ., Docket No. 95-22-494 (June 28, 1996). See generally W. Va. Dep't of Health v. Blankenship, 189 W. Va. 342, 431 S.E.2d 681 (1993); Princeton Community Hosp. v. State Health Planning & Dev. Agency, 174 W. Va. 558, 328 S.E.2d 164 (1985); Jones v. Bd. of Trustees, Docket No. 94-MBOT-978 (Feb. 29, 1996); Foss v. Concord College, Docket No. 91-BOD-351 (Feb. 19, 1993)." Della Mae v. Dep't of Transp./Div. of Highways, Docket No. 98-DNR-204 (Feb. 26, 1999).

While it is understandable that there has been confusion about which plan is the approved one, this confusion was addressed in the memoranda of September 23, 2003, and February 20, 2004. The only alternate procedure adopted by PCBOE is the one dated September 9, 1996. This approved plan states, "Drivers are not charged for trips missed during Thanksgiving, Christmas, and spring breaks." It is does not say bus operators are not charged for trips taken. PCBOE is required to follow the approved plan and has interpreted this policy in a manner which is inconsistent with the common meaning of the language. See Watts, supra. Additionally, this Grievance Board gives reasonabledeference to the agency's interpretation of its own policy, and this interpretation is not arbitrary and capricious or unreasonable. See Dyer, supra. It was not unreasonable for PCBOE to charge Grievant for the trip taken during spring break.

The above-discussion will be supplemented by the following Conclusions of Law.

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. Procedural Rules of the W. Va. Educ. & State Employees Grievance Bd. 156 C.S.R. 1 § 4.21 (2004); Holly v. Logan County Bd. of Educ., Docket No. 96-23-174 (Apr. 30, 1997); Hanshaw v. McDowell County Bd. of Educ., Docket No. 33-88-130 (Aug. 19, 1988). See W. Va. Code § 18-29-6. "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).

2. Since the only approved policy relating to extracurricular assignments for bus operators states, "Drivers are not charged for trips missed during Thanksgiving, Christmas, and spring breaks," PCBOE's decision to charge Grievant for the trip he took during spring break does not violate the approved policy, nor is it unreasonable and/or arbitrary and capricious.

3. Grievant has not met his burden of proof and demonstrated PCBOE violated the currently approved policy.

Accordingly, this grievance is DENIED. Any party may appeal this decision to the Circuit Court of Kanawha County, or to the Circuit Court of Putnam County. Any such appeal must be filed within thirty (30) days of receipt of this decision. W. Va. Code § 18-29-7. Neither the West Virginia Education and State 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 appealing party must also provide the Board with the civil action number so that the record can be prepared and properly transmitted to the appropriate circuit court.

JANIS I. REYNOLDS

ADMINISTRATIVE LAW JUDGE

Dated: July 28, 2005

Footnote: 1

Grievant was represented by Susan Hubbard of the West Virginia Education Association, and Respondent was represented by Attorney Greg Bailey from Bowles Rice McDavid Graff and Love.