THOMAS W. SANDERS,

Grievant,

v. **Docket No. 06-38-076**

POCAHONTAS COUNTY BOARD

OF EDUCATION,

Respondent.

DECISION

Thomas Sanders ("Grievant") initiated this proceeding on December 20, 2006, alleging he was improperly denied travel reimbursement for travel to state athletic tournaments. After this grievance was filed, Grievant was reimbursed for the travel in question, but now challenges the source of the funds used to pay him. After denials at the lower levels, Grievant appealed to level four on February 28, 2006. A hearing was conducted in Elkins, West Virginia, on April 26, 2006, at which Grievant represented himself, and Respondent was represented by counsel, Ashley Hardesty. This matter became mature for consideration upon receipt of the parties' fact/law proposals on May 16, 2006.

The following material facts have been proven by a preponderance of the evidence of record.

Findings of Fact

1. Grievant is employed as principal of Pocahontas High School.

2. On November 7, 2005, Grievant submitted advance approval requests for travel reimbursement for trips he would be taking to the state volleyball playoffs on November 11, 2005, and to state football playoffs on November 12, 2005. 3. It is normal and expected practice for school principals to attend any tournaments in which any of their school's teams are playing.

4. Grievant's travel requests for the playoff games were approved in advance by Superintendent Patrick Law, on November 9, 2005.

5. At a regularly scheduled Board meeting on December 12, 2005, Grievant's travel

reimbursement requests for the tournaments, totaling approximately $315, were presented to the Board for approval of payment.

6. At that meeting, the Board deferred action on Grievant's travel reimbursement, directing that he be paid from funds received from the Secondary Schools Athletic Commission, which would go directly to the school.

7. Pocahontas High School did not receive its share of the proceeds from the volleyball and football tournaments until January 19, 2006. At that time, the school received $1,590.78 into its subsidiary athletic account.

8. The subsidiary athletic account is used to fund many sports-related expenses of the school, including equipment and travel reimbursement for athletic personnel.

9. Grievant controls the subsidiary athletic account and may reimburse himself from it at any time, but he has chosen not to do so. In the past, similar travel reimbursement has been paid from county funds.

10. Respondent's Policy "DJD," titled "Expense Reimbursement" provides that mileage reimbursement will be made at the federal government rate. It further states that "[p]rior authorization must be secured for out-of-county trips" and that the request for authorization must be submitted to the superintendent at least ten days prior to departure. The policy does not state what the source of reimbursement funds should be.

Discussion

This is a non-disciplinary grievance in which Grievant bears the burden of proof, and his allegations must be proven by a preponderance of the evidence. *See*, W. Va. Code § 18-29-6, 156 W. Va. C. S. R. 1 § 4.21. Grievant contends that the requirement that his travel expenses be paid from the school account sets a dangerous precedent, and that future principals may not receive reimbursement if funds are not available in the athletic account. He contends that Respondent should be bound by its prior practice of paying for principals' travel from county funds. Respondent argues that it has not refused to pay Grievant for his travel, and that there is no requirement that his reimbursement come from any particular source of funds.

Unfortunately, Grievant has cited no law, policy, rule or regulation that Respondent has violated in this situation. As to Policy DJD, there is no requirement that any particular funding source be used for

travel reimbursement. Based upon the limited evidence available in this case, the undersigned finds that Respondent's decision was reasonable under the circumstances. As admitted by Grievant and shown by account records, the subsidiary athletic account is often used for travel reimbursement for other school personnel who are required to travel to athletic events. However, for unexplained reasons, it has not previously been used to reimburse the principal for similar expenses. In addition, and as noted by Respondent, it did not refuse to reimburse Grievant for his travel, and presumably would have paid him from county funds, if school funds had not been available. Also, it should be noted that, in the absence of a legal requirement to do so, a board of education is not required to follow the same informal personnel practices year after year. *Conner v. Barbour County Bd. of Educ*., Docket No. 93-01-246 (Apr. 28, 1994). *See e.g*., *Taylor v. Monongalia County Bd. of Educ*., Docket No. 92-30-314 (Nov. 30, 1992); *Biller v. Upshur County Bd. of Educ*., Docket No. 90-49-533 (Sept. 27, 1991); *Napier v. Lincoln County Bd.of Educ.*, Docket No. 89-23-635 (May 25, 1990); *Isaacs v. Lincoln County Bd. of Educ.*, Docket No. 89-22-555 (Jan. 12, 1990); *Terek v. Ohio County Bd. of Educ.*, Docket No. 35-87-294-3 (July 20, 1988).

Moreover, this grievance became moot when the Board approved Grievant's reimbursement, and the funds were placed in the school's account. At that time, Grievant could have paid himself the expenses he was owed, but it was his own choice not to do so. Any obligation on the part of his employer ended there. "Moot questions or abstract propositions, the decisions of which would avail nothing in the determination of controverted rights of persons or property, are not properly cognizable [issues]." (See footnote 1) Accordingly, while Grievant's concern for future principals and their right to reimbursement is admirable, he has failed to state any right to relief under the circumstances presented. The following conclusions of law support this decision.

Conclusions of Law

1. In a non-disciplinary matter, Grievant bears the burden of proof, and his allegations must be proven by a preponderance of the evidence. *See*, W. Va. Code § 18- 29-6, 156 W. Va. C. S. R. 1 § 4.21. 2. Grievant has failed to prove that Respondent's directive regarding travel reimbursement violated any law, rule, policy, regulation, or agreement.

Accordingly, this grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County, or to the Circuit Court of Pocahontas 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.

Date: June 21, 2006

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DENISE M. SPATAFORE

Administrative Law Judge

Footnote: 1

Bragg v. Dep't of Health & Human Res., Docket No. 03-HHR-348 (May 28, 2004).