

**WEST VIRGINIA PUBLIC EMPLOYEES  
GRIEVANCE BOARD**

**SYNOPSIS REPORT**

**Decisions Issued in July 2021**

The Board's monthly reports are intended to assist public employers covered by a grievance procedure to monitor significant personnel-related matters which came before the Grievance Board, and to ascertain whether any personnel policies need to be reviewed, revised or enforced. W. Va. Code §18-29-11(1992). Each report contains summaries of all decisions issued during the immediately preceding month.

If you have any comments or suggestions about the monthly report, please send an e-mail to [wvgb@wv.gov](mailto:wvgb@wv.gov).

**NOTICE:** These synopses in no way constitute an official opinion or comment by the Grievance Board or its administrative law judges on the holdings in the cases. They are intended to serve as an information and research tool only.

**TOPICAL INDEX**  
**HIGHER EDUCATION EMPLOYEES**

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**KEYWORDS:** Employee; Employer; Jurisdiction

**CASE STYLE:** Spratt v. West Virginia University Medical Corporation  
DOCKET NO. 2021-2415-MISC (7/21/2021)

**PRIMARY ISSUES:** Whether the Grievance Board has jurisdiction in this matter.

**SUMMARY:** Grievant was employed by the West Virginia University Medical Corporation and grieves his dismissal from that employment. West Virginia University Medical Corporation is a domestic non-profit corporation that is affiliated with West Virginia University but is not a part of West Virginia University. The Grievance Board lacks jurisdiction in this matter. Accordingly, the grievance is dismissed.

**TOPICAL INDEX**  
**COUNTY BOARDS OF EDUCATION**  
**PROFESSIONAL PERSONNEL**

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**KEYWORDS:** Job Duties; Classification; Comprehensive Developmental School Counseling Model Reference Guide

**CASE STYLE:** Persinger v. Mercer County Board of Education  
DOCKET NO. 2020-0289-MerED (7/9/2021)

**PRIMARY ISSUES:** Whether Respondent has violated identifiable provision of applicable governing rule, regulation or statute pertaining to school counseling.

**SUMMARY:** Grievant, a school counselor for Mercer County, alleges she is being required to perform duties which are noncompliant with regulating policy and/or statute. Grievant points to the “Comprehensive Developmental School Counseling Model Reference Guide” as the mandate for school counselor’s assignments.

West Virginia Code §18-5-18b and West Virginia Department of Education Policy 2315 sets out an array of requirements for school counseling programs. Grievant did not establish by a preponderance of the evidence that Respondent has exceeded recognized constraints on the parameters of her employment by requiring that Grievant perform an identified variety of duties. School Counselors should spend 80% of time providing direct services for students and no more than 20% performing indirect services. It is understood and duly recognized that excessive duties could and would affect the percent of work time a School Counselor could effectively participate in a direct counseling relationship with pupils. Nevertheless, it is not established by a preponderance of the evidence that Respondent has exceeded recognized constraints on the parameters of Grievant’s employment as a school counselor. Accordingly, this Grievance is DENIED.

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**KEYWORDS:** Suspension; Termination; Misconduct; Insubordination; Willful Neglect of Duty; Immorality; Policy; Code of Conduct; Retaliation; Mitigation

**CASE STYLE:** Hogsett, Jr. v. Cabell County Board of Education

DOCKET NO. 2020-0856-CONS (7/1/2021)

**PRIMARY ISSUES:** Whether Respondent had good cause to terminate Grievant's employment.

**SUMMARY:** Grievant was employed as a teacher by Respondent at Huntington Middle School. Grievant was suspended without pay and then terminated from his employment after confessing under oath in a grievance proceeding that he had entered the principal's office to search for employee information, had searched through the principal's desk draws and filing cabinet, had taken pictures of documents, and had shared those documents with law enforcement. Respondent proved Grievant violated Respondent's policy and that his misconduct constituted insubordination, willful neglect of duty, and immorality. Grievant failed to prove that the termination was invalid due to process failures, that the termination was discriminatory or retaliatory, that he was entitled to an improvement period, or that the discipline should be mitigated. Accordingly, the grievance is denied.

**TOPICAL INDEX**  
**COUNTY BOARDS OF EDUCATION**  
**SERVICE PERSONNEL**

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**KEYWORDS:** Reduction in Force; Qualifications; Job Duties; Harassment; Arbitrary and Capricious

**CASE STYLE:** Meddings v. Wayne County Board of Education  
DOCKET NO. 2020-1523-WayED (7/23/2021)

**PRIMARY ISSUES:** Whether Grievant proved his claims by a preponderance of the evidence.

**SUMMARY:** Before his position was abolished through a reduction in force (RIF), Grievant was regularly employed by Respondent as an Inventory Supervisor/Groundsman/Handyman. Grievant made suggestions about how his department should be reorganized to be more efficient, which included RIF'ing his position and creating three new positions. Grievant worked on this reorganization plan with the Superintendent. Grievant's position was RIF'd as he had proposed to the Superintendent and he did not contest the same. However, the Board refused to approve the creation of the three new positions as proposed. The Board changed one of the three to a professional position, for which Grievant was not qualified, and rewrote the job qualifications and responsibilities. The Board did not approve the creation of the other two positions. As a result, Grievant had no employment for the upcoming school year. Grievant argues that the Board engaged in acts of reprisal, retaliation, and harassment. Respondent denies Grievant's claims and asserts that the Board acted properly, violating no rule, policy, or law. Grievant failed to prove his claims by a preponderance of the evidence. Therefore, the grievance is DENIED.

**TOPICAL INDEX**  
**STATE EMPLOYEES**

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**KEYWORDS:** Suspension; Termination; Investigation; Inappropriate Tone of Voice; Verbal Abuse

**CASE STYLE:** Adkins v. Department of Health and Human Resources/Mildred Mitchell-Bateman Hospital  
DOCKET NO. 2021-2039-CONS (7/23/2021)

**PRIMARY ISSUES:** Whether Respondent proved it had good cause to terminate Grievant's employment for verbal abuse of a patient.

**SUMMARY:** Grievant was dismissed from employment after an investigation was conducted regarding her interaction with a patient. The investigation concluded that Grievant had committed verbal abuse of a patient by making loud statements using "an inappropriate tone of voice" . . . "in a manner interpreted as threatening/abusive toward the patient." Grievant argues that she always speaks loudly, and the patients do not seem to mind. She also claims she was not threatening the patient and the witnesses misunderstood what she was saying. Respondent proved the allegations by a preponderance of the evidence. Further, Grievant had been previously disciplined for similar issues. Accordingly, the grievance is denied.

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**KEYWORDS:** Suspension; Refusal to Comply with a Directive; Return to Work Guidelines; COVID-19 Exposure

**CASE STYLE:** King v. Division of Highways  
DOCKET NO. 2021-0027-DOT (7/19/2021)

**PRIMARY ISSUES:** Whether Respondent was justified in suspending Grievant until he agreed to comply with his supervisor's directive.

**SUMMARY:** Grievant is employed by Respondent as a Bridge Inspector IV. Grievant was suspended for failing to follow his supervisor's directive to wear a face mask pursuant to Respondent's guidelines. At the time of the suspension, Grievant provided no legitimate reason for his refusal to comply with the directive. Respondent was justified in suspending Grievant until he agreed to comply with his supervisor's directive. Accordingly, the grievance is denied.

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**KEYWORDS:** Promotion; Selection; Minimum Qualifications; Experience; Job Posting; Arbitrary and Capricious

**CASE STYLE:** McDaniel v. Division of Corrections and Rehabilitation/Bureau of Prisons and Jails and Division of Personnel  
DOCKET NO. 2020-0799-MAPS (7/20/2021)

**PRIMARY ISSUES:** Whether Grievant proved that DOP acted in an arbitrary or capricious manner as it relates to Grievant's accredited qualifications for the position in discussion.

**SUMMARY:** Grievant applied to a vacant posting seeking a promotion to a position classified as a Corrections Case Manager. Grievant was selected by her employer (Respondent Lakin) to fill the position; however, when the agency submitted the personnel transaction to Division of Personnel, it was determined that the Grievant did not possess the minimum qualifications of the position as set forth in the class specification for the Corrections Case Manager. Specifically, Grievant does not hold a college degree and arguably does not possess the requisite substitution for the degree requirement. Grievant believes that her employment history as a Correctional Officer ("CO") should be counted toward meeting the substitution for the degree requirement and argues that in the past an employee's time worked in a position classified as a CO was a permissible substitution.

Work experience as a CO is considered to be experience in the area of security. Neither Respondent DCR nor Respondent DOP currently adhere to the position or believe the experience as a CO is, or should be, considered experience in an area of corrections programming or treatment. It is true that, in the past, a small section within the DOP permitted time as a CO to count toward meeting the Training Substitution for the Corrections Case Manager classification, this was done unbeknownst to DOP management. Once discovered by DOP management, the error was corrected, and the mistake was not further perpetuated. Grievant desires to have the mistaken interpretation continued for her benefit. DOP is not legally required to perpetuate a mistake. It was not established that Grievant, as a matter of law, is entitled to the relief she seeks. This grievance is DENIED.

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**KEYWORDS:** Temporarily Upgrade; Due Process Rights; Retaliation

**CASE STYLE:** Sprankle v. Department of Health and Human Resources/Bureau for Children and Families  
DOCKET NO. 2021-2173-CONS (7/20/2021)

**PRIMARY ISSUES:** Whether Grievant proved that Respondent violated any law, rule, policy or regulation in providing a temporary upgrade to one of its employees.

**SUMMARY:** Grievant is employed by Respondent as a Child Protective Services Worker. Respondent was given approval by the Division of Personnel to award another Child Protective Service Worker in Grievant's office a temporary upgrade to a supervisor's position. Grievant filed this action challenging Respondent's action in awarding another employee this temporary upgrade. Grievant failed to prove by a preponderance of the evidence that Respondent violated any law, rule, policy or regulation in providing this temporary upgrade. Grievant failed to establish that Respondent violated the Due Process clause of the West Virginia Constitution. Grievant failed to prove an adverse employment action was taken against him. Therefore, Grievant failed to establish a prima facie case of retaliation. This grievance is denied.

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**KEYWORDS:** Termination; At-Will Employee; Rules of Conduct; Unexcused Absences

**CASE STYLE:** Parsons v. Parkways Authority  
DOCKET NO. 2020-0074-DOT (7/19/2021)

**PRIMARY ISSUES:** Whether Grievant proved that the termination of his employment was motivated to contravene a substantial public policy.

**SUMMARY:** Grievant was employed by Respondent as an at-will Radio Operator. Grievant also served as a volunteer firefighter. Grievant's employment was terminated after he missed five consecutive shifts of work, including failing to call in at all on one day. Grievant failed to prove that the termination of his employment was motivated to contravene a substantial public policy. Accordingly, the grievance is denied.



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**KEYWORDS:** Motion to Dismiss; Timelines; Untimely Filed; Notice

**CASE STYLE:** Shock v. West Virginia Lottery

DOCKET NO. 2021-2347-DOR (7/30/2021)

**PRIMARY ISSUES:** Whether Respondent proved by a preponderance of the evidence that this grievance was untimely filed.

**SUMMARY:** Grievant was employed by Respondent as a Lottery Marketing Specialist. On March 17, 2021, Respondent notified Grievant that he was dismissed from employment, effective April 1, 2021. Grievant filed a grievance challenging his dismissal on April 9, 2021. Respondent proved by a preponderance of the evidence that this grievance was untimely filed. Grievant failed to demonstrate any proper bases for excusing his untimely filing. Therefore, the grievance is dismissed.