

**WEST VIRGINIA PUBLIC EMPLOYEES  
GRIEVANCE BOARD**

**SYNOPSIS REPORT**

**Decisions Issued in July 2009**

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**

---

**KEYWORDS:** AGREEMENT; INJURY-IN-FACT

**CASE STYLE:** FROST v. BLUEFIELD STATE COLLEGE  
DOCKET NO. 2009-0920-BSC (7/17/2009)

**PRIMARY ISSUES:** Whether Respondent complied with the settlement agreement voluntarily entered into by the parties on a previous grievance.

**SUMMARY:** Grievant had previously filed a grievance because his Position Information Questionnaire (“PIQ”) stated he would provide “personal counseling” to students. Grievant did not feel qualified to do that. Grievant asserts he and Respondent entered into an agreement whereby Respondent agreed to reevaluate Grievant’s PIQ. Grievant avers that a month after that settlement, Respondent informed him there would be no change to his PIQ. Grievant also appears to be looking for assurance his pay grade will not reduced. Respondent argues all promises and obligations were set forth in the settlement agreement, and that it complied with all of its obligations under that agreement. Respondent avers Grievant is attempting to grieve the same issue raised in 2008-0009-BSC. Lastly Respondent asserts Grievant has failed to state an injury-in-fact. Grievant has failed to state a claim upon which relief could be granted, as his paygrade will not be reduced. Therefore, this grievance is denied.

---

**KEYWORDS:** CLASSIFICATION; PIQ; PAY GRADE; DISCRIMINATION; FAVORITISM; POINT FACTORS; SIMILARLY SITUATED

**CASE STYLE:** BOYCE, ET AL. v. WEST VIRGINIA UNIVERSITY  
DOCKET NO. 2008-0369-CONS (7/10/2009)

**PRIMARY ISSUES:** W. Va. Code §§ 6C-2-2(d) & (h)

**SUMMARY:** Grievants argued that the position information questionnaires of fellow employees had been inflated and exaggerated, which resulted in those employees being placed in a classification in a higher pay grade than Grievants. Grievants believed this was favoritism and discrimination. The employees to whom Grievants compared themselves did not perform the same duties as Grievants, and therefore were not similarly situated to Grievants. Further, the relief sought, that Grievants be placed in the higher pay grade, could not be granted because Grievants failed to challenge any point factors assigned to their classification, and did not demonstrate they were misclassified. This Grievance is DENIED.

---

**KEYWORDS:** DEMOTION; DISCRIMINATION; DRIVING PRIVILEGES; FLEET MANAGEMENT PROCEDURE; ACCIDENTS; DISCLOSURE OF MEDICAL CONDITION; SIMILARLY SITUATED

**CASE STYLE:** GILBERT v. WEST VIRGINIA UNIVERSITY  
DOCKET NO. 2009-0548-WVU (7/23/2009)

**PRIMARY ISSUES:** Whether Grievant was discriminated against.

**SUMMARY:** After his third at fault accident, Grievant, a bus operator for Respondent, was notified that his driving privileges had been revoked by Respondent, and that he would be demoted. One of Grievant's accidents was caused by his own reckless disregard, and could have caused serious injuries to his passengers. In addition, he had failed to disclose an important change in his medical condition to Respondent. Respondent demonstrated it acted in accordance with its policy when it revoked Grievant's driving privileges. Grievant claimed he was discriminated against because he was demoted to a pay grade 7 position, while a co-worker who had his driving privileges revoked was demoted to a pay grade 11 position. Respondent looked for a position for Grievant for several months and could not find a position in a higher pay grade for which he was qualified. Grievant also claimed he was discriminated against because another co-worker did not have her driving privileges revoked after three minor maneuvering accidents. Grievant was not similarly situated to either co-worker. This Grievance is DENIED.

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

---

**KEYWORDS:** STANDING; SELECTION; SUBSTITUTE

**CASE STYLE:** HATCHER v. RALEIGH COUNTY BOARD OF EDUCATION  
DOCKET NO. 05-41-389R (7/27/2009)

**PRIMARY ISSUES:** Whether Grievant should have been offered the position of Title I Reading Teacher at the Alternative Learning Center after the successful applicant was not permit eligible.

**SUMMARY:** Grievant asserts she was not chosen for the Title I position at the Alternative Education Center. Grievant argues the West Virginia State Department of Education determined the successful candidate ineligible for receiving a permit. Yet, Respondent allowed that individual to remain in the position as a substitute. Grievant avers she should have been placed in the Title I position after the successful candidate was determined not to be permit eligible. Respondent asserts Grievant did not meet the minimum qualifications for the position, in that she did not hold the required certification. Respondent avers that since Grievant was not minimally qualified for the position, she lacks standing to grieve the selection of another candidate for the position, as she did not show an adverse affect. Lastly, Respondent argues it did not abuse it's discretion in filling the contested position. Grievant did not meet her burden of proof. This grievance is DENIED.

---

**KEYWORDS:** WHOLLY UNAVAILABLE, REMEDY, DEFAULT, ADVISORY OPINION, MOTION TO DISMISS, PROPER AND AVAILABLE REMEDIES

**CASE STYLE:** DANIEL v. FAYETTE COUNTY BOARD OF EDUCATION  
DOCKET NO. 2008-1762-FAYED (7/13/2009)

**PRIMARY ISSUES:** Whether a decision on statutory interpretation should be issued where it would result in an advisory opinion?

**SUMMARY:** Grievant seeks to require the BOE to post positions in a particular fashion. Grievant did not apply for the position posting that led to the filing of this grievance. Grievant filed this grievance so this Board could clear up an issue of statutory interpretation. The West Virginia Public Employees Grievance Board does not issue advisory opinions. Accordingly, this grievance is DENIED.

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

---

**KEYWORDS:** CLAIM PRECLUSION, ISSUE PRECLUSION, RES JUDICATA, UNIFORMITY, DISCRIMINATION, LIKE ASSIGNMENTS AND DUTIES, SIMILARLY SITUATED, EXTRACURRICULAR CONTRACT, BACK PAY, TIMELINESS

**CASE STYLE:** LANHAM, ET AL. v. PUTNAM COUNTY BOARD OF EDUCATION  
DOCKET NO. 2008-1691-CONS (7/14/2009)

**PRIMARY ISSUES:** Whether the BOE may provide non-uniform benefits to employees performing like assignments and duties?

**SUMMARY:** Grievants argue that they are being discriminated against and are not being treated uniformly because at least one other extracurricular bus operator is being compensated under a 200-day contract as opposed to an “as needed” contract. 200-day extracurricular contracts provide the benefit of additional compensation for snow days, holidays, sick days and non-instructional professional days.

Respondent BOE generally alleges that the Grievants are not similarly situated to the bus operator with which they compare themselves and are not performing like assignments and duties. Further, the BOE maintains that this grievance was not timely filed by some of the Grievants.

Similarly situated employees performing like assignments and duties must be treated uniformly. Some Grievant bus operators have established, by a preponderance of the evidence, that they are not receiving uniform benefits for like assignments and duties when compared to at least one other bus operator who holds a 200-day extracurricular contract. Their claims are GRANTED. Other Grievant bus operators have not established, by a preponderance of the evidence, that they are performing like assignments and duties when compared to another bus operator who holds a 200-day extracurricular contract. Their claims are DENIED.

Insofar as some Grievants are transportation “bus” aides, they are not similarly situated to any employee holding a 200-day extracurricular contract and are not performing like assignments and duties when compared to a bus operator. The bus aide Grievants’ claims must be DENIED. Grievant Bessie Casto’s claims are DISMISSED based upon the doctrines of issue preclusion and claim preclusion.

---

**KEYWORDS:** TERMINATION; MISCONDUCT; INSUBORDINATION; WILLFUL  
NEGLECT OF DUTY

**CASE STYLE:** RITCHEA v. OHIO COUNTY BOARD OF EDUCATION  
DOCKET NO. 2009-0991-OHIED (7/24/2009)

**PRIMARY ISSUES:** Whether Grievant engaged in conduct constituting insubordination  
and willful neglect of duty.

**SUMMARY:** Grievant's substitute bus operator contract was terminated by  
Respondent on January 29, 2009. The termination followed a  
hearing held before the Ohio County Board of Education on multiple  
charges of misconduct against Grievant brought by the County  
Superintendent. The evidence established that Grievant had been  
involved in incidents of unprofessional conduct, running red lights,  
and speeding while serving as a substitute bus operator for Ohio  
County Schools. As a result, the Respondent proved by a  
preponderance of the evidence that it properly exercised its authority  
pursuant to W. Va. CODE § 18A-2-8 in terminating Grievant's  
substitute bus operator's contract. This grievance is DENIED.

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

---

**KEYWORDS:** DISCRIMINATION; SIMILARLY SITUATED; STATE OWNED VEHICLE; COMMUTING; VEHICLE POOLING; PARKING POLICY

**CASE STYLE:** LATIF v. DIVISION OF HIGHWAYS  
DOCKET NO. 2008-1608-DOT (7/8/2009)

**PRIMARY ISSUES:** Whether Grievant is similarly situated to employees who are allowed to pool their assigned state owned vehicles at a location other than District Headquarters.

**SUMMARY:** Grievant believes he has been discriminated against because he is not allowed to use his assigned state owned vehicle to commute to and from work, while there are some DOH employees who are allowed to do so, or are allowed to park their state owned vehicles at a site other than the District Headquarters which is closer to their home. DOH's Vehicle Policy provides that certain employees, including those who are primarily field based, may park their state owned vehicles at locations other than the District Headquarters. Grievant's duties are not primarily field based, and he is not similarly situated to those employees to whom he compares himself. This Grievance is DENIED.

---

**KEYWORDS:** SECONDARY EMPLOYMENT; DISCRIMINATION; ARBITRARY AND CAPRICIOUS

**CASE STYLE:** RODGERS v. DEPARTMENT OF ENVIRONMENTAL PROTECTION  
DOCKET NO. 2008-0854-DEP (7/20/2009)

**PRIMARY ISSUES:** Whether DEP's decision to deny Grievant's secondary employment request was arbitrary and capricious. Whether DEP discriminated against Grievant.

**SUMMARY:** Grievant sought secondary employment, but this request was denied by DEP because the agency concluded this secondary employment would conflict with the organizational interest of the agency and would create the appearance of impropriety or conflict. Grievant did not meet her burden of proof. Grievance DENIED.

---

**KEYWORDS:** SUSPENSION; MITIGATION; PROGRESSIVE DISCIPLINARY POLICY; HORSEPLAY; UNSATISFACTORY PERFORMANCE; DISPROPORTIONATE

**CASE STYLE:** WARD v. DIVISION OF CORRECTIONS/DENMAR CORRECTIONAL CENTER

DOCKET NO. 2009-0408-MAPS (7/21/2009)

**PRIMARY ISSUES:** Whether a five-day suspension of Grievant was appropriate for his inadequate and unsatisfactory work performance.

**SUMMARY:** Grievant is employed by the Denmar Correctional Center as a Correctional Officer 2. He was suspended for five-days for three instances of inadequate or unsatisfactory work performance. Grievant acknowledges that the incidents occurred, with explanations in mitigation, suggesting the penalty was too harsh. Respondent asserts that the length of the suspension was not so disproportionate to the employee's offense that mitigation is appropriate. Grievant failed to prove otherwise; thus, the requested mitigation of the five-day suspension is denied and the grievance is DENIED.

---

**KEYWORDS:** TIMELINESS; RETALIATION; HOSTILE WORK ENVIRONMENT; RES JUDICATA; COLLATERAL ESTOPPEL

**CASE STYLE:** MCBRIDE JORDAN v. DIVISION OF JUVENILE SERVICES/SOUTHERN REGIONAL DETENTION CENTER

DOCKET NO. 05-DJS-306R (7/14/2009)

**PRIMARY ISSUES:** Whether Grievant was denied a promised raise and working in a hostile work environment by Respondent? Whether her grievance was timely filed?

**SUMMARY:** This case was remanded to the Public Employees Grievance Board by the Circuit Court of Mercer County on December 18, 2007 for litigation on the merits and the granting of appropriate relief. A remand hearing was held on February 26, 2009, and at that hearing, Grievant argued that she was denied a pay raise and subjected to a hostile work environment. Respondent proved that the grievance was not filed within the time period required by statute in effect at the time the grievance was filed. Additionally, Grievant failed to prove that she was subject to a hostile work environment. This Grievance is DENIED.

---

**KEYWORDS:** WORK SCHEDULE; ARBITRARY AND CAPRICIOUS; PAST PRACTICE

**CASE STYLE:** BELL, ET AL. v. DIVISION OF HIGHWAYS

DOCKET NO. 2008-0826-CONS (7/8/2009)

**PRIMARY ISSUES:** Whether Grievant's placement on night shift, in contradiction to the past practice of the county, was arbitrary and capricious.

**SUMMARY:** Grievant Dodge asserts the past practice at the Preston County DOH has been to allow the more senior workers to choose whether they wanted to work day or night shift during Snow Removal/Ice Control ("SRIC") season which lasts from approximately October 31 through April 15. Grievant Dodge asserts that, even though he had more seniority than most in the county, he was placed on night shift after having an argument with the supervisor that resulted with Grievant calling Human Resources in Charleston to discuss the incident. Grievant Dodge also argues that his physician recommended he work day shift, given an issue with his blood pressure. Still, Grievant was placed on night shift during the SRIC season. He avers the decision to place him on night shift was arbitrary, capricious and unreasonable. Respondent argues it is the policy of DOH not to take seniority into consideration when making shift assignments. Respondent avers that it is important to have a mixture of experienced and less experienced drivers on each shift. Respondent also asserts that Preston County has been understaffed for sometime which affects shift assignments. Grievant Dodge met his burden of proof that his assignment to night shift during the SRIC season was arbitrary, capricious, and unreasonable.