

News Alert!



AFT-WV PROTECTING YOUR RIGHTS DRESS CODE POLICY

We are pleased to announce grievances* filed before the West Virginia Public Employees Grievance Board on behalf of our members who were disciplined for alleged violation of the Lewis County Board of Education's Dress Code Policy resulted in an August 26, 2015 favorable decision from Administrative Law Judge Brenda Gould. The grievances, filed in October 2013, alleged there was no just cause for discipline; the policy is not based upon legislative authority; and the policy is not constitutional. Although Judge Gould concluded that the Board had the authority to adopt a written Dress Code, she granted the grievances and ordered Lewis County Board of Education to remove all reference to the written reprimands and to remove the prohibition on the wearing of blue jeans from the Dress Code.

The Level 3 grievance decision is public and should be available at www.pegb.wv.gov/Pages/DatabaseSearch.aspx in the near future; use 2014-0456-CONS to search by docket number.

Excerpts from the decision follow....

- ... it is unreasonable to expect employees to wear nice clothing when they are going to be sitting outside on bleachers participating in a pep rally.
- Respondent [LCBOE] failed to present a rational basis for allowing teachers to wear black jeans, green jeans, and jeans of any other color, but not blue denim jeans.
- Grievants should be allowed to wear shorts when they believe this attire is appropriate to the learning activity.
- [Grievant] Ms. Shafer found it ironic that they were trusted with the education of students, but could not be trusted to determine what was appropriate clothing.
- The authority of a county board of education to discipline an employee must be based upon one or more of the causes listed in West Virginia Code § 18A-2-8, and must be exercised reasonably, not arbitrarily or capriciously.
- Respondent failed to demonstrate that Grievants... were motivated by defiance of authority in wearing clothing in violation of the Dress Code Policy. Grievants' behavior was not insubordinate, nor did it constitute willful neglect of duty.
- To withstand Constitutional scrutiny, an employer must show a rational basis between a legitimate business decision and the implementation of a dress code. Respondent has not shown a rational basis for the rule restricting the wearing of blue denim jeans.

Please note that LCBOE could appeal the decision. We encourage you to use your best judgment and to exercise caution until the Board removes the prohibition on the wearing of blue jeans. We will keep you updated.

*There were five Grievants, and the grievances were consolidated. AFT-WV represented four members; WVEA represented one member; Denise Spatafore represented the Respondent. AFT-WV's attorney Jeffrey Blaydes was the only attorney to submit a Reply Brief for Judge Gould's consideration.