

# Legal Update on COVID-Related Concerns (10/ 22/20)



## **The Map of Many Colors**

As mentioned in the previous legal update, the AFT-WV legal team has spent countless hours researching and evaluating statewide legal options to address the ever-changing color-coded map. In the two Kanawha County cases heard so far, both Judge Kaufman and Judge Ta-bit dismissed the mandamus, prohibition, and declaratory judgement. These claims, one brought by a parent and a second brought by a student, have provided a road map to undermine most, if not all, future claims. Although we strongly disagree with how the Governor has handled school re-entry and the metrics for the map, he has the constitutional authority and discretion for these decisions as per the precedent set regarding executive authority in the “Graham Case.” Because of this case, our attorneys believe a lawsuit to abolish the map or mandate the Harvard map would have a slim to zero chance of success and have decided to pursue remedies for our members on the local level.

## **Grievance update**

As part of AFT-WV legal strategy, grievances have been filed in several counties including Kanawha, Wayne, Randolph and Marion. Many of these grievances were filed on behalf of all AFT members at several schools for “imposing conditions that threaten the health and safety of members as well as seeking implementation of a model of delivery of which permits adequate safeguards for the health and well-being of the staff.”

AFT-WV is pleased to announce some early success in utilizing this strategy. Last week, grievances at Riverside High School, Hayes Middle School and John Adams Middle School in Kanawha County were resolved at Level 1 to the satisfaction of the grievants at each school. The grievance resolution in each case addressed the health and concerns of the members and included a reduction in class sizes to permit social distancing. Other cases involving health and safety concerns are still pending action at this time.

“The swift resolution in these Kanawha cases gives us some optimism in gaining relief for our members’ specific safety concerns on the worksite level. This grievance was resolved in less than two weeks, so I am hopeful we can replicate this in other areas to quickly resolve safety issues,” explained AFT-WV President Fred Albert.

Grievances filed in other counties, including Marion and Randolph, address “double duty” or “dual instruction.” This is the practice describing one educator having to teach in-person learners and remote learners simultaneously. Level 1 hearings have not been held on these cases yet but are upcoming. Grievances are set to be filed tomorrow in Marion County on behalf of over 100 members at 13 different schools.

Members who have specific health and safety concerns and are interested in discussing a grievance are encouraged to contact their AFT local president or AFT staff representative at 1-800-222-9838.