

Legal Update on COVID-Related Concerns



Over the past several weeks, AFT-WV leadership has been consulting with our legal team to explore various ways to address the school-related COVID concerns of our members. Our in-house attorney and outside counsel have been researching case law and collaborating on possible avenues for intervention and action, both on the state and local levels.

AFT-WV attorneys have spent countless hours researching the statewide legal action on the color-coded map. In the two Kanawha County cases heard so far, both Judge Kaufman and Judge Tabit 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. Though not precedent, it provides persuasive authority against any similar actions filed in the future.

Although we strongly disagree with how the Governor and WVDE have handled school re-entry and the metrics for the map, they have the constitutional authority and discretion for these decisions, particularly in emergency situations. There is no clear legal right to a particular map (Harvard or otherwise). There is a 100 year old case (“Graham Case”) that set the precedent for executive authority which extends even beyond the court’s jurisdiction. AFT-WV attorneys do not believe a lawsuit to terminate the map meets the standard of non-discretionary acts, and therefore doesn’t meet the mandamus application. In plain terms, the case would have a slim to zero chance of success. There is always a risk of bad case law if unfounded, and any weak or unfounded legal challenge is likely to again be dismissed.

Because there is such a heavy legal burden to prove real harm or constitutional harm, AFT-WV is looking at a more tangible route to advocate for our members. At this point, we believe grievances are likely the best route for protection for our members and the resolution of concerns. These grievances will be filed against the local school board and based on the unique circumstances in each county and specific health protections not afforded to members. Many local presidents have been surveying members and speaking at local board meetings to express these concerns.

AFT-WV has already initiated this process in several counties including Kanawha, Wayne, Marion and Randolph. After surveying the membership, AFT-Kanawha identified the main concerns to address. In addition to requesting the local board revert back to a blended instructional model, the union filed multiple grievances against Kanawha County Schools 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.” These conditions include class sizes that do not permit social distancing. To their credit, Kanawha County Schools has contacted the union representative and is working to resolve the crowded class sizes in the grievants’ schools. In other counties, grievances on other health and safety issues as well as dual instruction (teaching remote and in-person learners simultaneously) have either been filed or are in the process of being filed.

“We are working every angle, exploring every avenue to get protections for our members,” explained AFT-WV President Fred Albert. “If utilizing the grievance procedure gets results, and gets members what they need to do their jobs safely, then that’s one of the methods we will employ. If local boards are willing to work on these issues, we can get our members what they need more quickly as well.”

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