IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

BRENDA HALL,

Petitioner-Appellant,

Civil Action No. 21-AA-3

KANAWHA COUNTY BOARD OF EDUCATION,

Respondent-Appellee

Consolidated With

ANTONIA VAUGHAN,

Petitioner-Appellant,

v.

v.

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Civil Action No. 21-AA-4

KANAWHA COUNTY BOARD OF EDUCATION,

Respondent-Appellee.

FINAL ORDER

Pending before the Court are the Petitioners Brenda Hall and Antonia Vaughan separately submitted *Petitions for Appeal*, such matters were consolidated into the present *Petition for Appeal*. The underlying matter initiated from a grievance filed by Petitioners with the West Virginia Public Employees Grievance Board (hereinafter referred to as the "Grievance Board"). The Grievance Board erroneously denied Petitioner's grievance, and thus the Petitioners' consolidated *Petition for Appeal* is **GRANTED** for the reasons contained herein.

STANDARD OF REVIEW

West Virginia Code § 6C-2-5 defines enforcement and reviewability of decisions issued

by the West Virginia Public Employees Grievance Board. The decision of an administrative law

judge can be reversed on appeal to the circuit court if the decision:

(1) Is contrary to law or a lawfully adopted rule or written policy of the employer;

Exceeds the administrative law judge's statutory authority;

- (3) Is the result of fraud or deceit;
- (4) Is clearly wrong in view of the reliable, probative and substantial evidence on the whole record; or
- (5) Is arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

W. Va. Code § 6C-2-5(b) (2007).

"A final order of the hearing examiner for the West Virginia Public Employees Grievance Board, and based upon findings of fact, should not be reversed on judicial review unless clearly wrong." *McCann v. Lincoln Cty. Bd. of Educ.*, 244 W. Va. 66, 851 S.E.2d 512 (2020).

Furthermore, the appellate court must uphold any of the administrative law judge's factual findings that are supported by substantial evidence, and the court owes substantial deference to inferences drawn from these facts. *Taylor-Hurley v. Mingo County Bd. of Educ.*, 209 W. Va. 780, 785, 551 S.E.2d 702, 707 (2001).

The West Virginia Supreme Court of Appeals has routinely held, "[i]nterpretations of statutes by bodies charged with their administration are given great weight unless clearly erroneous." Syl. Pt. 4, *Security National Bank & Trust Co. v. First W. Va. Bancorp, Inc.*, 166 W. Va. 775, 277 S.E.2d 613 (1981); Syl. Pt. 1, *Dillon v. Bd. of County of Mingo*, 171 W. Va. 631, 301 S.E.2d 588 (1983). The "clearly wrong" standard of review is a deferential one which "presume[s] an agency's actions are valid as long as the decision is supported by substantial evidence or by a rational basis." Syl. Pt. 1, *Adkins v. W. Va. Dep't of Educ.*, 210 W. Va. 105, 556 S.E.2d 72 (2001).

A reviewing Court is obligated to conduct a thorough evaluation to determine whether the findings are clearly wrong in light of the whole record.

FINDINGS OF FACT

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1. Petitioner Brenda Hall is an Educational Sign Language Interpreter who weeks with students who are hearing impaired at Capital High School, where she has been employed for twenty-five of the twenty-six years and has been employed with Kanawha County Schools. Petitioner Hall is licensed as an associate member of Registry of Interpreters for the Deaf (hereinafter "RID"), which meets the requirements of West Virginia Commission for the Deaf and Hard of Hearing (hereinafter "WVCDHH").

2. Petitioner Antonia Vaughn is an Educational Sign Language Interpreter who works with students who are hearing impaired at Capital High School, where she has been employed for seven of the twenty-seven years she has been employed with Kanawha County Schools. Petitioner Vaughn has both state and national licensure. Her state licensure includes an associate member of RID. She also has her national certification RID ED: K-12.

 Petitioner have been assigned the Professional Position Code of 330 by the West Virginia Department of Education (hereinafter "WVDE").

4. "Professional person" or "professional personnel" are defined by W. Va. Code § 18A-1-1(b) (2009) as "those persons or employees who meet the certification requirements of the state, licensing requirements of the state, or both, and includes a professional educator and other professional employee."

5. A "professional educator" is defined in the West Virginia Code as having "the same meaning as 'teacher' as defined in section one, article one, chapter eighteen of this code." W. Va. Code § 18A-1-1(c).

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6. A "classroom teacher" is defined as "a professional educator who has a direct instructional or counseling relationship with students and who spends the majority of his or her time in that capacity." W. Va. Code § 18A-1-1(c)(1).

8. "Teacher" means a "teacher, supervisor, principal, superintendent, public school librarian or any other person regularly employed for instructional purposes in a public school in this state."
W. Va. Code § 18-1-1(g) (2008).

 Both Petitioners hold a paraprofessional license as Interpreters. Neither Petitioner has a teaching certificate.

10. Petitioners' base salary is calculated and determined pursuant to W. Va. Code § 18A-4-2, which provides the state minimum salary schedule for all professional employees.

11. Effective July 1, 2019, the West Virginia Legislature enacted House Bill 206, which established, among other things, W. Va. Code § 18A-4-2(e) (2021), providing that "each classroom teacher certified in special education and employed as a full-time special education teacher shall be considered to have three additional years of experience only for the purposes of the salary schedule." W. Va. Code § 18A-4-2. This salary increase is referenced as a "three-step salary increase."

12. The three-step salary increase is paid through a reimbursement to a county by the WVDE.

13. The WVDE issued guidance on who would be eligible for the three-step salary increase. As a part of the guidance, the WVDE issued a document titled "HB 206 – Frequently Asked Questions – July 30, 2019," where it is clearly indicated that "classroom teachers" for the purposes of the three-step increase means educators who hold actual teaching certificates. Respondent's Exhibit 2.

14. Questions arose as to who would be eligible for pay pursuant to the new provisions to West Virginia Code § 18A-4-2. The "Frequently Asked Questions" document was designed to answer questions and provide clarification.

15. In a later guidance document titled "Instructions for Preparing and Submitting the Professional Personnel Employment Reports for the 2019-2020 School Year," the WVDE modified some of the endorsement field codes.¹ See R. Ex. 1. This document provided specific "endorsement codes" for special education teachers who the State Department recognized as being eligible for the three-step increase. This document states, "The endorsement code provided should be the endorsement code that verifies the employee is fully-certified in the content area in which they are providing instruction. The endorsement code can only be associated with a certificate 21, 22, 23, or 65. *Id.* at 16. All four of the certificates are licenses for classroom teachers.

16. Neither of the WVDE guidance documents provided to the Respondent identified and/or addressed education interpreters specifically.

17. Kimberly Olsen, the Human Resources Specialist for Professional Employees in Kanawha County Schools, testified at the level three Grievance Board hearing.

18. Petitioners were not included in the list of eligible employees because they do not hold a teaching certificate or a special education endorsement with WVDE, as deemed required to get the pay increase. Olsen L3 Testimony.

19. Human Resources Specialist Olsen credibly testified that once an individual has a teaching certificate, he or she can add endorsements by going back to school and completing coursework

¹ In the email that the guidance document was attached to, Amy Willard, the Executive Director in the WVDE Office of School Finance, states "Modifications were made on pages 15-17 related to the three-step increase and endorsement code fields." The two added types of certificates are a 23 (provisional professional non-transferable teaching license with the WVDE) and a 65 (a teaching license for a non-U.S. citizen).

required for the endorsement or taking a PRAXIS exam in that field, and then applying for the endorsement with the WVDE.²

20. WVDE has, through its interpretation and payment of this three-step increase, definitively stated that "classroom teachers" who do not hold a WVDE recognized certification do not get the pay increase.

21. If the Respondent were to permit someone to get the pay increase who is not approved to get it, in accordance with the WVDE interpretation of the law, the county would not be reimbursed for that person's increase.

22. Petitioners spend majority of their day in the classroom setting interpreting the classroom teacher's material and content for their hearing impaired students. Petitioners are not duly recognized by the Respondent as being employed as certified teachers.

CONCLUSIONS OF LAW

1. The Petitioners assert that the Grievance Board erroneously denied the Petitioners' grievance. Specifically, Petitioners contest Finding of Fact No. 20 from the level three West Virginia Public Employees Grievance Board Decision by asserting that it is a legal conclusion. The Finding of Fact in question states that "[p]ursuant to WVDE guidelines a special education teacher must have a teaching certificate with special education endorsement and be employed as a special education teacher in order to receive the additional three-step salary increase." *Brenda Hall and Antonia Vaughn v. Kanawha County Board of Education*, ALJ Ruling No. 2020-0897-CONS, at 7 (2020).

2. "School personnel regulations and laws are to be strictly construed in favor of the employee." Syl. Pt. 1, Morgan v. Pizzino, 163 W.Va. 454, 256 S.E.2d 592 (1979); See also Syl.

² Ms. Olsen testified that an individual cannot get an endorsement without a teaching certificate.

Pt. 1, Cruciotti v. McNeel, 183 W.Va. 424, 396 S.E.2d 191 (1990); Syl. Pt. 1, State ex rel Boner v.

Kanawha County Board of Education, 197 W.Va. 176, 475 S.E.2d 176 (1996).

3. The West Virginia Legislature enacted a statute that provides a three step pay raise for

certain employees. In pertinent part, the provision at issue states:

Effective July 1, 2019, each classroom teacher certified in special education and employed as a full-time special education teacher... shall be considered to have three additional years of experience only for the purposes of the salary schedule set forth in subsection (b) of this section: *Provided*, That for any classroom teacher who satisfies these requirements and whose years of experience plus the three additional years due to them exceeds the years of experience provided for on the salary schedule shall be paid the additional amount equivalent to three additional years of experience notwithstanding the maximum experience provided on the salary schedule.

4. W. Va. Code § 18A-4-2(e). The Petitioner asserts there are three elements in the aforementioned statute. Analyzing the statute, for an employee to be entitled to this benefit, he or she must meet the following elements: (1) classroom teacher; (2) certified in special education; and (3) employed as a full-time special education teacher. The Court agrees with the Respondent that the lower court failed to make a finding on all three elements above, so this Court will address each in turn.

I. Classroom teacher

5. The Petitioners argue that they are "classroom teachers" as provided in W. Va. Code § 18A-1-1. On the other hand, the Respondent argues that the administrative law judge did not make a finding on whether the Petitioners are "classroom teachers." The Respondent further maintains that the Petitioners are not "classroom teachers" or "teachers" because they do not have a degree in education.

6. "Collateral estoppel... does not always require that the parties be the same. Instead, collateral estoppel requires identical issues raised in successive proceedings and requires a determination of the issues by a valid judgment to which such determination was essential to the

judgment." State v. Miller, 194 W. Va. 3, 9, 459 S.E.2d 114, 120 (1995); see Conley v. Spillers, 171 W.Va. 584, 301 S.E.2d 216 (1983); Lane v. Williams, 150 W.Va. 96, 100, 144 S.E.2d 234, 236 (1965). "Collateral estoppel will bar a claim if four conditions are met: (1) the issue previously decided is identical to-the one presented in the action in question; (2) there is a final adjudication on the merits of the prior action; (3) the party against whom the doctrine is invoked was a party or in privity with a party to a prior action; and (4) the party against whom the doctrine is raised had a full and fair opportunity to litigate the issue in the prior action." *Miller*, 194 W. Va. 9, 459 S.E.2d 120. "It is 'that aspect of the doctrine of [collateral estoppel] which serves to estop the relitigation by parties and their privies of any right, fact or legal matter which is put in issue and has been once determined by a valid and final judgment of a court of competent jurisdiction."" *Id.; see State v. Wilson*, 180 Conn. 481, 485, 429 A.2d 931, 933 (1980).

7. "The findings and conclusions of an administrative agency may be binding upon the parties in a subsequent proceeding if the agency that rendered the decision acted in a judicial capacity and resolved disputed issues of fact which the parties had an opportunity to litigate." *Miller*, 194 W. Va. 9, 459 S.E.2d 120.; *see Vest v. Board of Educ. of the County of Nicholas*, 193 W.Va. 222, 455 S.E.2d 781 (1995).

8. Following a careful and thorough review of the record, the Court disagrees with the Respondent. In fact, the Petitioner correctly asserts that an administrative law judge decided that these same Petitioners are indeed "teachers." See Hall and Vaughan v. Kanawha County Bd. of Educ., ALJ Ruling No. 2014-0282-CONS (2014). Therefore, it appears to the Court that the Respondents are estopped from raising this issue. Pursuant to the doctrine of collateral estoppel, four conditions must be met. See Miller, 194 W. Va. 9, 459 S.E.2d 120. In the instant matter, the Respondents are raising the issue of whether the Petitioners are considered "teachers" under the

statute. In the 2014 grievance, that was the primary issue, and the administrative law judge decided on the merits that the Petitioners are "teachers" under that statute. *Hall and Vaughan*, ALJ Ruling No. 2014-0282-CONS, at 7. Second, the 2014 action proceeded to a level three grievance hearing in which the administrative law judge entered a decision siding with the Petitioners. Third, the parties in the *Appeal* at hand are the same Petitioners and Respondent as the 2014 grievance action. Fourth, following the 2014 decision, the Respondent had the opportunity to appeal the action to Circuit Court but chose not to do so. Thus, waiving to further litigate the issue. Because the issue of whether the Petitioners constitute as "teachers" meet the four conditions, the issue is collaterally estopped from being relitigated.

9. This Court is persuaded by the previous administrative decision, and accepts the findings and conclusions of law made therein. Therefore, without proper dispute, this Court finds that the Petitioners are "teachers," which must mean the Petitioners are "professional educators" since the two phrases have the same meaning under W. Va. Code § 18A-1-1. The Court thus adopts the 2014 decision and discusses its findings below.

10. The West Virginia Code "defines a 'teacher' as any number of things that are not the common usage of the word." *Hall and Vaughan*, ALJ Ruling No. 2014-0282-CONS. at 7. "Instructional purposes" is not defined in either chapter, and it could certainly be said that the Petitioners "are employed for 'instructional purposes' as they are directly conveying the instruction of the classroom teacher to their assigned students through sign language interpretation." *Id.* The Petitioners "would, therefore, meet the definition of 'teacher' in chapter eighteen and the salary schedule would directly apply." *Id.*

11. As the West Virginia Public Employees Grievance Board has already ruled that Petitioners constitute as teachers for the purpose of the salary schedule, this element of the statutory requirement is met. To construe the Petitioners as "teachers," this would mean they are also "professional educators" under W. Va. Code 18A-1-1(c). The question turns to what professional educator classification the Petitioners are under the statute.

12. The four classifications under "professional educator" are:

(1) "Classroom teacher" means a professional educator who has a direct instructional or counseling relationship with students and who spends the majority of his or her time in this capacity.

(2) "Principal" means a professional educator who functions as an agent of the county board and has responsibility for the supervision, management and control of a school or schools within the guidelines established by the county board. The principal's major area of responsibility is the general supervision of all the schools and all school activities involving students, teachers and other school personnel.

(3) "Supervisor" means a professional educator who is responsible for working primarily in the field with professional and other personnel in instructional and other school improvement. This category includes other appropriate titles or positions with duties that fit within this definition; and

(4) "Central office administrator" means a superintendent, associate superintendent, assistant superintendent and other professional educators who are charged with administering and supervising the whole or some assigned part of the total program of the countywide school system. This category includes other appropriate titles or positions with duties that fit within this definition.

W. Va. Code § 18A-1-1(c).

13. Reviewing the above four classifications, it becomes obvious that if the Petitioners are indeed a "professional educator," then they must be classified as a "classroom teacher" under the statute.

14. The word "classroom teacher" is a bit of a misnomer as a "classroom teacher" does not have to teach in a classroom. This is demonstrated by the definitions cited herein, which focuses on the work being done, such as "having an instructional or counseling relationship with students." Indeed, as this Board has noted, "the code defines a 'teacher' as any number of things that are not the common usage of the word." *Hall and Vaughan.*, ALJ Ruling No. 2014-0282-CONS, at 7

(ruling that sign language interpreters meet the definition of "teachers" for the purpose of the state teacher salary schedule and that their work as support personnel in sign language interpretation counted for experience credit thereunder as "the number of years the teacher has been employed in the teaching profession."); see also Brezer : Ohio County Bd. of Educ., 201 W. Va. 398, 497 = S.E.2d 548 (1997) (upholding the counting of prior work as a speech pathologist as years of service credit in the teaching profession).

15. The lower tribunal ruled that Petitioners spent majority of their day in the classroom setting interpreting the classroom teacher's material and content for their hearing impaired, which, in turn, can be construed as spending more than half of their day conducting instructional activities. Therefore, the Petitioners meet the definitions of a "professional educator" and a "classroom teacher" because they engage in instructional duties with students for more than half of their work day.

II. Certified in special education

16. Turning to the second element of W. Va. Code § 18A-4-2(e), Petitioners argue that they are "certified in special education" due to their paraprofessional certificate in educational interpretation. The Respondent argues the Petitioners are not certified in special education because they do not hold a teaching degree or license issued by the state.

17. The Court rejects the Respondent's interpretation of the statute's meaning. The Respondent argues that W. Va. Code § 18A-4-2(e) to mean that the classroom teacher holds a certification in special education, also known as an endorsement. In order to hold an endorsement, a teacher first must have a license to teach, then take additional coursework through an approved program or PRAXIS exam to qualify for a special education endorsement. The Respondent also argues that the WVDE document entitled "HB 206 – Frequently Asked Questions – July 30, 2019," for the

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purposes of the three-step increase, means educators who are fully certified to teach special education.

18. While the Circuit Court gives the WVDE's interpretation of the statute great weight, the Court finds the interpretation to be clearly erroneous. See Syl. Pt. 4, Security National Bank & Trust Co., 166 W. Va. 775, 277 S.E.2d 613; Syl. Pt. 1, Dillon, 171 W. Va. 631, 301 S.E.2d 588. Rather, the Court sides with the Petitioners.

19. Because the Petitioners are classroom teachers that have a certification as Interpreters for the Deaf, and education for the hearing impaired is recognized as part of special education, they hold a "certification in special education." The Petitioners' argue that the W. Va. Code § 18A-4-2(e) does not require an individual to have a certification as a special education teacher. Rather, it requires that the person be "certified in special education." If the West Virginia Legislature intended the requirement to be a "certified special education teacher," it would have written the law to mean exactly that. In addition, the West Virginia Legislature would have drafted the statute to require the classroom teacher to have both a teaching license and a special education endorsement if that was their intention for the statute to be interpreted like the Respondent argues. Thus, the Court sides with the Petitioners.

20. Moreover, the West Virginia Code mandates that education statutes and policies are to be construed liberally in favor of the employees. *See* Syl. Pt. 1, *Morgan*, 163 W.Va. 454, 256 S.E.2d 592. Both Petitioners are Educational Sign Language Interpreters. Petitioner Hall is licensed as an associate member of RID, which meets the requirements of WVCDHH. Petitioner Vaughn has both state and national licensure. Her state licensure includes an associate member of RID. She also has her national certification RID ED: K-12. Without the aforementioned licenses, the Petitioners would not be certified to work with hearing impaired students. By liberally construing the statute at hand in favor of the Petitioners, the Court finds that the plain meaning of the statute reads as it was drafted: "certified in special education." Thus, the Court finds the WVDE's interpretation to be clearly erroneous, and the Petitioners are certified in special education.

III. Employed as a full-time-special education teacher

18. The Court will now address the final element of whether the Petitioners are employed as full-time special education teachers. Because the Court has found that the Petitioners classify as teachers, specifically classroom teachers, and are certified in special education, the Court lastly must look to whether they are employed full-time in their roles. Analyzing the record, it appears to be undisputed that the Petitioners work full time, and since the Court has already determined they are certified in special education and classify as classroom teachers under the statutory definition, this Court finds the Petitioners are employed as full-time special education teachers, pursuant to W. Va. Code § 18A-4-2(e).

RULING

21. Petitioners have demonstrated that they are each a "classroom teacher," "certified in special education," and as such are employed as a "full time special education teacher." Therefore, Petitioners have proven, that as Interpreters of the Deaf, they are among the groups of employees meant to be given the pay enhancement set forth in W. Va. Code § 18A-4-2(e).

22. The West Virginia Department of Education's interpretation of Code provisions within its ambit are entitled to great weight unless clearly erroneous. *Smith v. Bd. of Educ. of the County of Logan*, 176 W.Va. 65, 341 S.E.2d 685 (1985). Here, the Respondent claims that its non-payment of the wage enhancement to Petitioners are in accord with the opinion of the WVDE. However, the interpretation at issue is clearly erroneous as it goes against the plain meaning of the statute.

23. Therefore, since the Petitioners meet the statutory requirements to be among the class of

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employees that are designated to be given the pay enhancement under W. Va. Code § 18A-4-2(e), the Petition for Appeal is **GRANTED**, and thus this Court **REVERSES** the decision below.

24. A prevailing grievant is generally entitled to back pay from one year before the filing of the grievance. W. Va. Code § 6C-2-3(c)(2) (2003). Thus, Respondent is hereby **ORDERED** to pay the Petitioners back pay up to and including one year before the filing of their grievance, plus interest.

25. A grievant who substantially prevails in a grievance matter on an appeal to Circuit Court is generally entitled to reasonable attorney fees and costs. *See* W. Va. Code § 6C-2-6 (2007). Thus, this Court **ORDERS** Respondent to pay Petitioners reasonable attorney fees and costs. The parties are encouraged to agree to these amounts. If not, Petitioners will file the appropriate Petition for Attorney Fees and Costs and Respondent will have the opportunity to oppose the same.

The objections and exceptions to this Order by Respondent are expressly preserved.

The Circuit Clerk shall send a certified copy of this Order to counsel of record:

Andrew Katz, Esq. Katz Working Families Law Firm, LC Security Building, Suite 1106 100 Capitol St. Charleston, WV 25301 Lindsay D. C. McIntosh, Esq. Office of General Counsel Kanawha County Board of Education 200 Elizabeth St. Charleston, WV 25311

ENTERED this <u>14</u> day of September, 2021

Kenneth D. Ballard, Judge

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VS. KANAWHA COUNTY BOARD OF EDUCAT

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1	01/07/21	A CASE INFO SHEET; PETITION W/AITACH & COS; DOCKETING STATEMENT
2		DESIGN OF RECORDS I ILLS RCPT 584381, \$200.00
3	03/04/21	SR ORDER SIGNED 3/3/21 DLVD
4	03/03/21	LK O: REEP TO FILE THE ENTIRE RECORD UNDER REVIEW BY 3/18/21
5		S/RAU
6	03/17/21	NOF TO CONSOLIDATE APPEALS OF THE SAME GRIEVANCE W/COB
7	04/09/21	# RECORD FROM WV PUBLIC EMPLOYEES GRIEVANCE BOARD
8	04/14/21	AR ORDERS (2) SIGNED 4/14/21 DLVD
9	04/14/21	LK O: GRANTING MOT TO CONSOLIDATE 9/0'HANLON
10	D4/14/21	LE O: SCHEDULING O RNTERED 3/3/21 IS SET ASIDED AND SETTING
12		NEW BRILLFING SCHRDULD
12	05/21/21	# AFPELLANT'S, BRENDA MALL & ANTONIA VAJGHAN'S BRIEF W/COS
13	06/22/21	# RESPONDENT'S BRIDE W/COS
14	09/14/21	SR ORDER SIGNER 9/14/21 DLVD
18	09/14/21	FINAL ORDER EXTERED

ANTOSTA VAUGHAA ****** • •

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