

What Discretion Does a Board of Education Have in Issuing Alternative Work Schedules on Snow Days?

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Already this year, many of Boards of Education in West Virginia have been faced with a number of school cancelations and delays as a result of inclement weather. A common question from school administrators is: What discretion does a Board of Education have in issuing alternative work schedules on snow days?

[West Virginia Code 18A-5-2](#) provides that "any school or schools may be closed by proper authorities on account of . . . conditions of weather or any other calamitous cause over which the board has no control. Under any or all of the above provisions, the time lost by the closing of schools is counted as days of employment and as meeting a part of the requirements of the minimum term of one hundred eighty days of instruction. On such day or days, county boards of education may provide appropriate alternate work schedules for professional and service personnel affected by the closing of any school or schools under any or all of the above provisions. Professional and service personnel shall receive pay the same as if school were in session."

Of course when a Board of Education provides alternative work schedules, it must do so without discrimination and/or favoritism. [West Virginia Code 6C-2-2](#) defines discrimination as "any differences in the treatment of similarly situated employees, unless the differences are related to the actual job responsibilities of the employees or are agreed to in writing by the employees". And, favoritism is defined as "unfair treatment of an employee as demonstrated by preferential, exceptional or advantageous treatment of a similarly situated employee unless the treatment is related to the actual job responsibilities of the employee or is agreed to in writing by the employee." In sum, a Board of Education should be uniform among similarly situated employees.

For example, in [Denny Sullivan v. Jackson County Bd. of Educ.](#), Docket No. 96-18-087 (Aug. 30, 1996), the board of education on a state of emergency day called only maintenance and custodial employees to work, as they were considered essential to maintain the premises and remove snow. If any employee in either of these classifications was unable to report to work they were required to take some form of leave time. The Grievants, all in the classifications required to report, initialed a grievance alleging favoritism and discrimination because other employees did not have to report to work. However, the Grievance Board ruled that the Grievants failed to show any violation, and ruled that "a county board of education may establish 'alternative work schedules' for employees during a time of emergency."

Also, it is important to note that "differences in work sites can justify differences in the treatment of employees assigned to those sites despite that the employees are in the same classification." [Bryan Rogers v. Jackson County Bd. of Educ.](#), Docket No. 96-18-104 (Aug. 30, 1996).

Another example is found in [Sandra Shetler and Deborah Weatherholtz v. Berkeley County Bd. of Educ.](#), Docket No. 00-02-119 (June 9, 2000) in which the Board of Education directed all central office personnel to report to work on a one hour delay on a day in which school was closed for snow. School based staff was not

to report to work. The Grievants were both Special Education Coordinators. The Grievance Board ruled that the "Grievants were not similarly situated to the employees who were not required to report to work. The other 210-day employees that did not have to work were school-based employees, were not in Grievants' classification, and their schools, or places where they worked, were not open for business." Again, the most important factor is to similarly situated employees are treated equally, but, differences in work sites can justify differences in the treatment of employees assigned to those sites despite that the employees are in the same classification.

Should you have any questions on this issue or any issues please feel free to contact a member of Dinsmore & Shohl's [Education Law Practice Group](#).