



**BEFORE THE
GUAM CIVIL SERVICE COMMISSION
BOARD OF COMMISSIONERS**



IN THE MATTER OF:

ELEUTERIO J. MESA,

Employee,

vs.

DEPARTMENT OF EDUCATION,

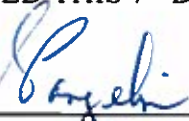
Management.

**GRIEVANCE APPEAL
CASE NO. 17-GRE13**

JUDGMENT OF DISMISSAL

The Civil Service Commission hereby dismisses the above captioned case with prejudice pursuant to the Motion to Dismiss Appeal, attached hereto.

SO ADJUDGED THIS 7th DAY OF November 2017.




EDITH PANGELINAN
Chairperson



LOURDES HONGYEE
Vice-Chairperson



PRISCILLA T. TUNCAP
Commissioner



JOHN SMITH
Commissioner

CATHERINE GAYLE
Commissioner



MICHAEL G. TOPASNA
Commissioner



Phyllis M.B. Blas,
 Lay Representative
 DEPARTMENT OF EDUCATION
 Jon J.P. Fernandez
 Superintendent of Education
 500 Mariner Avenue
 Barrigada, Guam, 96913
 P: 300-1535
 Email: pmbblas@gdoc.net



**Before The Civil Service Commission
 Government of Guam**

IN THE MATTER OF:)	
)	CSC CASE NO. 17-GRE13
)	
ELEUTERIO J MESA,)	
)	
Employee,)	MOTION TO DISMISS
)	
vs.)	
)	
DEPARTMENT OF EDUCATION,)	
)	
Management.)	
)	

TO: The Civil Service Commission of Guam and Employee

I. INTRODUCTION

COMES NOW, the Department of Education (DOE or Management), by and through Phyllis Blas, Lay Representative, and hereby submits this Motion to Dismiss as follows:

II. PROCEDURAL BACKGROUND

The above-captioned matter (17-GRE13) arises from the findings related to a Grievance Appeal submitted by Employee Eleuterio J. Mesa to the DOE Superintendent of Education on May 30, 2017. Mesa elevated the appeal to the Civil Service Commission (CSC) at the Step 4 level on June 28, 2017. DOE now moves to dismiss Mesa's appeal because it is substantially

1 similar to Mesa's prior appeal (17-GRE05) which was dismissed with prejudice on May 11,
2 2017.

3 III. DISCUSSION

4 Management brings this motion to dismiss Mesa's appeal (17-GRE13) on the basis that
5 Mesa's prior appeal (17-GRE05) was dismissed with prejudice on May 11, 2017.

6 CSC Rule G15.4, "Motions to Dismiss," states:

7 *"An Employee may dismiss his appeal with prejudice by filing a written motion to*
8 *dismiss which must be signed by the Employee and his representative or attorney,*
9 *if any."*

10 Mesa submitted his "Withdrawal of Step 4 Grievance" to the CSC on April 25, 2017.

11 The Judgement of Dismissal with Prejudice was adjudged by the CSC on May 11, 2017.

12 Mesa filed the above-captioned matter (17-GRE13) on June 28, 2017.

13 The above-captioned matter (17-GRE13) and Mesa's dismissed appeal (17-GRE05) are
14 substantially similar.

15 Mesa should not be allowed to re-file basically the same Grievance Appeal.

16 **1. Management contends that the basis for both the above-captioned matter**
17 **(17-GRE13) and Mesa's prior appeal (17-GRE05) is the same: Mesa wants back pay based**
18 **on the status of J.P. Torres.**

19 The Subject of the 17-GRE13 Step 1 Grievance is "high school principal pay."

20 The 17-GRE13 Step 1 Grievance also discusses the status of J.P. Torres.

21 Specifically, in the 17-GRE13 Step 1 Grievance dated April 28, 2017, Mesa states: "On
22 April 14, 2017, 1:54 PM, I inquired with Antonette Muna Santos (Administrator for Personnel
23 Services Division) regarding Superintendent Fernandez's conversion of J.P. Torres Alternative
24 School to J.P. Torres Alternative High School."
25

1 Presumably, based on this inquiry about J.P. Torres' status, Mesa claims that he should
2 receive a high school principal's pay.

3
4 Specifically, in an e-mail to Santos dated April 14, 2017, Mesa states: "As we were
5 discussing the settlement of my CSC cases last year, I did mention to Mr. Fernandez that I must
6 be paid a high school principal's pay for the school year 2015-2016." See Attachment 01 to
7 Mesa's 17-GRE13 Step 1 Grievance.

8 This claim in the 17-GRE13 Grievance (for high school principal pay based on J.P.
9 Torres' "conversion") was already made in the 17-GRE05 Step 1 Grievance dated January 31,
10 2017, filed three months earlier.

11 Specifically, the third paragraph of the 17-GRE05 Step 1 Grievance states: "While I was
12 discussing with Superintendent Fernandez about my demotion and termination back pay, I
13 proposed to be paid as a high school principal for school year 2015-2016. To date, I never got a
14 feedback on the issue."
15

16 In addition, Mesa already mentioned the "conversion" of J.P. Torres in the 17-GRE05
17 Step 1 Grievance, which he connected to his claim of "Demotion of HS [high school] Principal
18 to MS [middle school] Principal," the title of his 17-GRE05 Step 1 Grievance.
19

20 Specifically, the first paragraph of the 17-GRE05 Step 1 Grievance states: "During the
21 summer of 2015, JP Torres Alternative School was converted to JP Torres Alternative High
22 School."
23

24 Furthermore, the remedy that Mesa seeks in 17-GRE13 is exactly the same as the remedy
25 he already sought in 17-GRE05.

1 Specifically, in the 17-GRE13 Grievance, Mesa asks for, "2. Back pay as a High School
2 Principal from August 2015 to the Present."

3
4 This is the same relief sought in the 17-GRE05 Grievance, where Mesa previously asked
5 for, "3. Because Superintendent Fernandez converted JP Torres Alternative School to JP Torres
6 Alternative High School Principal [sic], it is only right that I be given a high school principal's
7 pay from August 2015 to the present."

8 On April 24, 2017, Mesa wrote a Memorandum to the Executive Director of the CSC,
9 Peter S. Calvo, informing the CSC that effective immediately his 17-GRE05 Grievance would be
10 withdrawn.

11
12 Mesa's 17-GRE05 Grievance was later dismissed with prejudice per the CSC's Judgment
13 of Dismissal on May 11, 2017.

14
15 Despite this, Mesa submitted his 17-GRE13 Step 1 Grievance, repeating his claim for
16 high school principal pay based on J.P. Torres' status on April 28, 2017.

17 The CSC should not allow Mesa to re-file basically the same Grievance that he already
18 voluntarily dismissed with prejudice.

19
20 **2. Management contends that numerous Exhibits provided in Mesa's already**
21 **dismissed 17-GRE05 Grievance were also resubmitted in support of his 17-GRE13**
22 **Grievance.**

23 In addition to having the same basis as his 17-GRE05 Grievance (described above),
24 Mesa's 17-GRE13 Grievance is also supported by the same documents that were already
25 submitted with the earlier 17-GRE05 Grievance.

1 Specifically, the following 45 documents were resubmitted again as supporting
2 documents for Mesa's 17-GRE13 Grievance which is based on the same claims as the 17-GRE05
3 Grievance:

- 4 1. JP Torres Project Narrative Page 1 of 14
- 5 2. JP Torres Project Narrative Page 2 of 14
- 6 3. Cover Page J.P. Torres Alternative School Student Handbook
- 7 4. Meet our Faculty and Staff
- 8 5. School Year Calendar 2015-2016
- 9 6. Design and Criteria
- 10 7. Curriculum, Grade Level Determination and Graduation Requirements
- 11 8. DOE's Service Learning Program: Professional Development; Exit Procedures
- 12 9. Behavior Code of Conduct, Discipline Procedures, Class Discipline
- 13 10. Parental/Legal Guardian Rights or Grievances: Special Education
- 14 11. Electronic Devices, Visitor's Policy, Physical Restraint, Corporal Punishment
- 15 12. Fire Drill, Earth Quake
- 16 13. Emergency Drills, Parent Information, Release of Students
- 17 14. Orientation Acknowledgements
- 18 15. School Directory, Assignments and Numbers (2015-16)
- 19 16. Continuation of School Directory
- 20 17. School Directory, (2016-2017)
- 21 18. School Directory, (2016-2017) Continued
- 22 19. School Directory, (2016-2017) Continued
- 23 20. GDOE SY15-16 August 19, 2015 Daily Bussing Issues
- 24 21. August 20, 2015 e-mail, Sophie Duenas to E. Mesa answered by Joe Sanchez
- 25 22. August 19, 2015 e-mail, E. Mesa to Naomi Uncangco re: Bulletin Board

- 1 23. Contractual Agreement for Participation (J.P. Torres Letterhead)
- 2 24. August 18, 2015 e-mail, Ref Okkodo High School Credit Recovery
- 3 25. August 13, 2015 e-mail, Bus Pick-up time for JP Torres Alternative High School
- 4 26. August 17, 2015 e-mail, to Erika Cruz Re: Teacher and Student Status
- 5 27. August 21, 2015, e-mail, High School Course Directory (Sylvia Calvo and Sophia
- 6 Duenas)
- 7 28. GDOE PRR 909.800 Step 4 – Appeal to the Civil Service Commission
- 8 29. GDOE PRR 909.500 Step 1 – Informal Grievance Procedure
- 9 30. News Article “A new start at JP Torres” 9/27/15
- 10 31. News Article “A new start at JP Torres” 9/27/15 (Continuation of Above)
- 11 32. News Article “Alternative School holds Ribbon Cutting” 9/29/15
- 12 33. Picture with “JP Torres Alternative High School” on Front of Building
- 13 34. Letter “Detail Assignment” dated August 18, 2016
- 14 35. Letter “Administrative Leave” dated November 3, 2016
- 15 36. Letter “Assignment” dated November 30, 2016
- 16 37. Letter “ School Assignment to Astumbo Middle” January 2017
- 17 38. Letter “Notice of Proposed Adverse Action” dated July 25, 2016
- 18 39. Letter “Notice of Proposed Adverse Action” dated July 25, 2016, Page 2
- 19 40. Letter “Notice of Proposed Adverse Action” dated July 25, 2016, Page 3
- 20 41. Letter “Notice of Proposed Adverse Action” dated July 22, 2016, Page 2
- 21 42. Letter “Notice of Proposed Adverse Action” dated July 22, 2016, Page 3
- 22 43. Letter “Notice of Proposed Adverse Action” dated July 26, 2016
- 23 44. Letter “Notice of Proposed Adverse Action” dated July 26, 2016, Page 2
- 24 45. Letter “Notice of Proposed Adverse Action” dated July 26, 2016, Page 3

25


1 As seen above, Mesa's use of the same documents to support both his 17-GRE05
2 Grievance and the 17-GRE13 Grievance demonstrates again that he has filed basically the same
3 thing.

4 The CSC should not allow Mesa to do this.

5 **IV. RELIEF**

6 For the forgoing reasons, the Department of Education finds that a dismissal of this
7 Employee's Grievance Appeal is fully warranted in this instance and hereby respectfully requests
8 that the Commissioners enter a decision and order in the record dismissing this case with
9 prejudice.

10
11 Submitted this 29th day of August 2017 by:

12
13 
14 Phyllis Blas,
15 Lay Representative for Management
16
17
18
19
20
21
22
23
24
25