**STATE OF OHIO**
**STATE PERSONNEL BOARD OF REVIEW**

Mary Louise Allen,

*Appellant,*

v.

Stark State College,

*Appellee,*

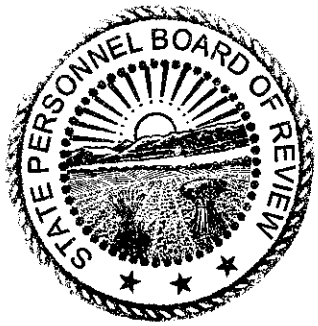
Case Nos. 2016-WHB-03-0029
2016-INV-03-0030
2016-MIS-03-0031
2016-SUS-03-0032
2016-WHB-03-0033
2016-INV-03-0034
2016-MIS-03-0035
2016-WHB-05-0084
2016-INV-05-0085
2016-MIS-05-0086
2016-WHB-05-0087
2016-INV-05-0088
2016-MIS-05-0089

## ORDER

These matters came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeals.

After a thorough examination of the entirety of the records, including a review of the Report and Recommendation of the Administrative Law Judge, along with any objections to that report which have been timely and properly filed, the Board hereby adopts the Recommendation of the Administrative Law Judge. *It is noted that Appellant requested and this Board granted Appellant additional time to prosecute the instant appeals. Allowing Appellant additional time at this point in the appeal process is unlikely to change the outcome of these matters. This is because this Board simply lacks jurisdiction over the entity of Stark State College, pursuant to R.C. Chapters 124. and 4167.*

Wherefore, it is hereby **ORDERED** that the 13 instant matters are **DISMISSED**, because Appellant did not appear at her Status Conference, because Appellant did not file her required memorandum *contra*, and because this Board lacks R.C. Chapter 124. subject matter jurisdiction over Appellee, Stark State College.




Casey - Aye
Tillery - Aye
McGregor - Aye

Terry L. Casey, *Chairman*

## CERTIFICATION

The State of Ohio, State Personnel Board of Review, ss:

I, the undersigned clerk of the State Personnel Board of Review, hereby certify that this document and any attachment thereto constitutes (the original/a true copy of the original) order or resolution of the State Personnel Board of Review as entered upon the Board's Journal, a copy of which has been forwarded to the parties this date, December 01, 2016.

Eric E. Com

*Clerk*

***NOTE:*** *Please see the reverse side of this Order* ***or*** *the attachment to this Order for information regarding your appeal rights.*

# NOTICE

Where applicable, this Order may be appealed under the provisions of Chapters 124 and 119 of Ohio Revised Code. An original written Notice of Appeal or a copy of your Notice of Appeal setting forth the Order appealed from and the grounds of appeal must be filed with this Board fifteen (15) days after the mailing of this Notice. Additionally, an original written Notice of Appeal or a copy of your Notice of Appeal must be filed with the appropriate court within fifteen (15) days after the mailing of this Notice. At the time of filing the Notice of Appeal or copy of your Notice of Appeal with this Board, the party appealing must provide a security deposit to the Board. In accordance with administrative rule 124-15-08 of the Ohio Administrative Code, the amount of deposit is based on the length of the digital recording of your hearing and the costs incurred by the Board in certifying your case to court. The length of the digital recording, the costs incurred, the corresponding amount of deposit required, and the final date that the Notice of Appeal or copy of your Notice of Appeal and the Deposit will be accepted by this Board are listed at the bottom of this Notice. If a full or partial transcript of the digital recording has been prepared prior to the filing of an appeal, the costs of a copy of that certified transcript will be accepted by this Board; transcript costs will be listed at the bottom of this Notice.

IF YOU ELECT TO APPEAL THIS BOARD'S FINAL ORDER, THEN YOU MUST PROVIDE THE DEPOSIT LISTED BELOW AT THE TIME YOU FILE YOUR NOTICE OF APPEAL OR COPY OF YOUR NOTICE OF APPEAL WITH THIS BOARD. Please note that the law provides that you have fifteen (15) calendar days from the mailing of the final Board Order to file your Notice of Appeal or copy of your Notice of Appeal both with this Board and with the Court of Common Pleas. The fifteenth day is the date that appears at the bottom of this Notice.

METHOD OF PAYMENT: for all entities other than State agencies, payment of the deposit must be by money order, certified check, or cashier's check. State agencies are required to use the Intra-State Transfer Voucher (ISTV) system (OBM Form 7205), which must be processed prior to the filing of an appeal. To initiate an ISTV, State agencies may call the State Personnel Board of Review Fiscal Office at 614/466-7046.

IF YOU MAINTAIN YOU CANNOT AFFORD TO PAY THE DEPOSIT LISTED BELOW, THEN YOU MUST COMPLETE THE BOARD'S "AFFIDAVIT OF INDIGENCE" FORM. YOU CAN OBTAIN THAT FORM BY CALLING 614/466-7046. THE COMPLETED AFFIDAVIT MUST BE RECEIVED BY THIS BOARD ON OR BEFORE December 8, 2016. You will be notified in writing of the Board's determination. If the Board determines you are indigent, you will be relieved of the responsibility to pay the deposit to the Board. However, if the Board determines you are NOT indigent, then YOU MUST FILE YOUR NOTICE OF APPEAL OR A COPY OF YOUR NOTICE OF APPEAL AND PAY THE DEPOSIT BY THE DATE LISTED BELOW.

**If you have any questions regarding this notice, please contact the Board at 614/466-7046.**

Case Number: 2016-WHB-03-0029, *et al*

Transcript Costs: N/A Administrative Costs: $25.00

Total Deposit Required: * $25.00

Notice of Appeal and Deposit Must
Be Received by SPBR on or Before: December 16, 2016

**STATE OF OHIO**
**STATE PERSONNEL BOARD OF REVIEW**

| | |
|---|---|
| Mary Louise Allen<br><br>*Appellant* | Case Nos. 2016-WHB-03-0029 *et al.*<br>(13 cases) |
| v. | July 19, 2016 |
| Stark State College<br><br>*Appellee* | James R. Sprague<br>*Administrative Law Judge* |

## REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

These 13 matters came on for consideration on July 19, 2016. A Status Conference was scheduled to take place before this Board on June 23, 2016 at 2:00 p.m. Appellee, Stark State College ("Stark State"), was present through its designee, Melissa Glanz, Director of Human Resources, and was represented by Matthew J. Karam and Rory P. Callaghan, Assistant Attorneys General.

Appellant failed to appear for the Status Conference and Appellee moved to dismiss all 13 of Appellant's appeals and requests for investigations. Appellee formally followed up on its motion on June 23, 2016. It did do by filing Appellee's motion to dismiss, an accompanying memorandum in support, and a variety of pertinent exhibits.

Those exhibits addressed Appellant's failure to attend the Status Conference. Those exhibits also addressed the question of whether this Board possesses R.C. Chapter 124. jurisdiction over the entity of Stark State College.

Appellant was provided with the requisite 10 days to file her required memorandum *contra* to Appellee's motion to dismiss. Moreover, the instant records remained open for approximately two *additional* weeks to ensure that Appellant had sufficient time to prepare and file her memorandum *contra*. Yet, to date, Appellant has not filed this document.

I find notice of the Status Conference was properly served on Appellant on May 27, 2016, by regular mail, and no good cause has been shown for Appellant's failure to appear. Further, the records reflect that both Appellant and her then-counsel were unquestionably aware of the Status Conference scheduled for June 23, 2016 at 2:00 p.m.

O.A.C. 124-11-19 (A) provides this Board with the authority to dismiss a matter before it if neither the Appellant nor the Appellant's authorized representative appears at a scheduled matter. Moreover, O.A.C. 124-11-07 (A) (2) and (C) combine to require the non-moving party (here, Appellant) to file a memorandum *contra* to a properly filed motion to dismiss within 10 days of service setting forth specific facts showing there is a genuine issue in dispute.

Appellant has failed to appear. Also, she has failed to file her required memorandum *contra*. Appellant's 13 instant cases may be dismissed for either of these two reasons.

Additionally, in Appellee's motion to dismiss, Appellee asserts that this Board lacks R.C. Chapter 124. subject matter jurisdiction over Stark State College. Appellee's assertion covers each type of jurisdiction that Appellant has attempted to invoke in her 13 instant appeals and requests for investigations.

It is certainly true that some initial jurisdictional confusion occurred in these matters. This is in part because Stark State College no longer appears to use the denomination "Technical" in its general parlance.

Yet, Appellee's pleadings, including pertinent documents relating to Stark State's Charter, appear to dispositively demonstrate that Stark State is a state *"technical college"* created under R.C. 3357.02. As such, it falls under the parameters established in R.C. Chapter 3357., entitled "Technical Colleges". We may contrast this with *"state community colleges"* that fall under the parameters established in R.C. Chapter 3358., entitled "State Community Colleges".

This distinction is entirely relevant. This is because this Board has repeatedly held that "technical colleges" falling under the parameters established in R.C. Chapter 3357. do not fall under this Board's subject matter jurisdiction as set forth in R.C. Chapter 124. (Please see *Butler v. Marion Technical College* [SPBR Case Nos. 2011-MIS-12-0420 and 2011-REM-12-0421]; *Neibarger v. Central Ohio*

*Technical College* [SPBR Case No. 2004-REM-10-0449]; *Kowalski v. Belmont Technical College* [SPBR Case No. 1994-REM-09-0327]; and *Wade v. Hocking Technical College* [SPBR Case No. 1989-REM-08-0405].

To summarize, Appellant failed to appear. Appellant then failed to file her memorandum *contra*. Finally (and independently), this Board lacks jurisdiction over Stark State College concerning the subject matter which Appellant attempts to invoke. Thus, Appellant's 13 instant cases should be dismissed.

It is possible that Ms. Allen has a valid, good reason for not appearing at her Status Conference and for asking for a continuance very shortly before her Status Conference was scheduled to begin. Yet, we must keep in mind that the Ohio General Assembly simply has not provided this Board with any jurisdiction to consider any subject matter arising from R.C. Chapter 124., when the appellant seeking to invoke that jurisdiction is a former or current employee of a "technical college".

Thus, unfortunately for Ms. Allen, even if this Board were contemplating remanding any or all of Appellant's 13 cases for a Status Conference, doing so would ultimately be for naught. This is because this Board has no power or authority to order or compel a technical college to do, or cease doing, any act; when that authority would otherwise be provided by R.C. Chapter 124.

*The parties are apprised that either party may file Objections to any component of a Report and Recommendation (R and R) to which the party disagrees. Objections must be filed with this Board and with the opposing party within 10 calendar days after the filing party (i.e. the party filing the Objections) receives the R and R.*

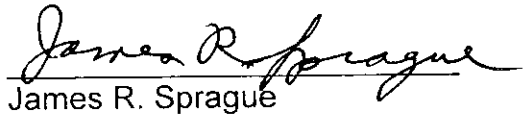
*Objections may be mailed or hand delivered to this Board at this Board's offices at 65 East State Street, 12th Floor, Columbus, OH 43215. Objections may also be emailed to this Board at spbr@sbpr.state.oh.us or faxed to this Board at (614) 466-6539.*

*The parties are encouraged to go to http://codes.ohio.gov/oac/124-15-02v1 to review the entire text of Ohio Administrative Code ("O.A.C.") 124-15-02. The parties should do this because O.A.C. 24-15-02 explains and governs the process*

*and requirements for filing Objections and Responses to Objections with this Board.*

## RECOMMENDATION

Therefore, I respectfully **RECOMMEND** that the State Personnel Board of Review **DISMISS** the 13 instant matters, because Appellant did not appear at her Status Conference, because Appellant did not file her required memorandum *contra*, and because this Board lacks R.C. Chapter 124. subject matter jurisdiction over Appellee, Stark State College.



James R. Sprague
*Administrative Law Judge*